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Current Topics.

A Judicial Conundrum.

LORD RUSSELL OF KILLOWEN must have startled most people by the doubts he expressed at The Law Society's Banquet at Folkestone recently (75 SOL. J. 672) whether he is technically a judge, for the general opinion is that this Lord of Appeal in Ordinary is "a very good judge, too." However, since he has doubted, lesser men may share his doubts without committing contempt. It is true, as he says, that the Lords of Appeal do not wear the orthodox wig and gown of the judge, and that they rise when the toast of Bench and Bar is honoured. The House of Lords is no ordinary court. Careful students of law reports will have noticed, instead of *cur. adv. vult*, "the House took time for consideration," and a Lord of Appeal "moving your lordships" that an appeal be dismissed. Some purists insist on referring to a "speech" in the House of Lords instead of a judgment. Lords of Appeal are peers who hold (e.g., the Lord Chief Justice) high official office, or who have held it (e.g., Lord DARLING), of whom at least three must be present to constitute a sitting of the House of Lords for judicial purposes. Lords of Appeal in Ordinary are persons who have held high judicial office or have practised at the Bar for at least fifteen years, and these are paid a salary. If they are not judges, we presume they hold high judicial office, which is a distinction without much difference. Laymen who are peers are apparently entitled to sit in the House of Lords and take part in judicial proceedings, but they have not done so since 1883, when in the case of *Bradlaugh* v. *Clarke*, in the House of Lords, Lord DENMAN, a lay peer, gave his judgment, which was in agreement with that of Lord BLACKBURN, who dissented from the rest of the law lords. (See "Halsbury's Laws of England," vol. IX, p. 23.) No one would be inclined to regard a lay peer as a judge in the ordinary sense, but despite Lord RUSSELL'S doubts, the average person will continue to regard him and the other Lords of Appeal as judges of an exalted rank.

Petty Sessions and Petty Offences.

IF MR. JUSTICE ROCHE has been correctly reported, he has been guilty of a misdescription. He is quoted as having said that a police court is "a place where small motoring offences and such things are dealt with": he is said to have complained that a police court should have tried two men for stealing cheques and sentenced them to six months' imprisonment. "It was quite wrong that a case of that serious nature should be disposed of in a police court." There may, of course, have been special circumstances in the particular case which made it undesirable that it should be tried summarily, but it is Parliament which has decreed that serious offences may be so tried The process of conferring summary jurisdiction to try crimes has been going on for years and has accelerated immensely of late. Justices can now try summarily arson of some kinds, numerous coinage offences, some forgeries, wounding, many forms of larceny, many bankruptcy offences, indecent assaults on the young, and innumerable other crimes certainly not comparable in gravity with small motoring offences. They have powers of imprisonment, usually limited to six months, but extending to twelve in some instances, and in one even to two years, and they can inflict fines ranging up to £500. This may be all wrong, but it just is so, and it is impossible to reverse the tendency.

A Municipal Election Pluralist.

IT IS stated that, in the forthcoming municipal elections, the sitting councillors in a certain London borough, hoping to have unopposed returns, have been confronted at the last hour by a particular candidate who offers himself for every ward. He has done this before, and the present councillors are not uneasy about their seats, because they do not believe that he is likely to poll more than a few votes anywhere. His candidature, however, naturally involves resented trouble and expense both to those he opposes and to borough officials and ratepayers, who consider, and perhaps legitimately, that they have a reasonable grievance in the matter. The present law allows any qualified person who can procure the requisite nominations to stand as candidate, and does not forbid plural nominations. The most obvious suggestion to prevent this kind of practice would appear to be the application of ss. 26 and 27 of the Representation of the People Act, 1918, or their equivalent, to municipal elections. Section 26 contains the well-known requirement of the deposit of £150 by a Parliamentary candidate, and s. 27 contains the provision that it shall be forfeited if he obtains less than one-eighth of the votes polled, and, moreover, if he chooses to stand for more than one constituency, all his deposits but one shall be forfeited, whatever the result. Possibly a smaller deposit than £150 might be required from a candidate for a borough council, but the amount should be such as, if not to prohibit, at least severely to discourage, any frivolous or freak candidature.

Avoiding the Moneylenders Act.

SOME INTERESTING observations on the possibility of avoiding the Moneylenders Act were made by Mr. Justice ROWLATT recently. A, the plaintiff in the case before his lordship, was a moneylender, and had lent a sum of money to B on a

promissory note, B depositing with A as security for the loan a bill of exchange, drawn by him on C and accepted by C and endorsed by B to the plaintiff A. The plaintiff's action was against C as the acceptor of the bill of exchange. It was obvious, of course, remarked the judge, that a device of putting a transaction into that form might be a very effective device for avoiding the Moneylenders Act. If they got a man who had really borrowed the money giving a bill of that kind to secure the loan, and then if a transaction of that nature were really carried through and the man who accepted the bill got the money, or part of it, then it was a mere case of bringing an action against the acceptor of the bill of exchange and the Moneylenders Act had nothing to do with it. It was, therefore, obvious, repeated his lordship, that a transaction of that nature might form a very effective way of getting round the Moneylenders Act. "It would not take a very great deal of evidence in cases of this kind," continued his lordship, "to make me think in certain cases that that might probably be the truth, but in this particular case I cannot see any evidence at all that the transaction was really a borrowing by C."

Expert Evidence.

EVERYONE IS familiar with the famous classification of witnesses as "liars, d—d liars and expert witnesses"—a culmination not complimentary to the latter, expressing the view popularly entertained that expert witnesses are merely advocates who are paid large fees and are called to support the party who pays them. Like most popular opinions, it is, happily, not universally true, but undoubtedly there is a natural tendency on the part of one with expert knowledge to merge himself into an advocate and strenuously argue for the side which called him. This has been felt quite as much in the United States as in this country, and many and various have been the attempts to curb the ardour of expert witnesses and to prevent their zeal running away with them. In the current number of the *Massachusetts Law Quarterly* appears an article entitled "An Important Experiment to Check the Abuses and Absurdities of Expert Testimony," and it sets out a new rule of the Boston Real Estate Exchange which runs thus: "Every member testifying under oath in the course of legal proceedings as to the value of real estate shall furnish the Exchange with a statement of the material parts of his testimony within a week after it is given, showing the location and general description of the property, the value placed upon it by the witness, the date as of which it was valued and the date on which, and the tribunal before which, the testimony was given." The indexed records of the Exchange compiled from the particulars furnished in accordance with the new rule are to be accessible to the public, who can compare them with any fresh opinion as to the value placed upon real property. By this means the Exchange will exercise a check on the opinions of its members, and at the same time assist in removing the distrust which has been generally felt concerning expert testimony as to the value of real property. It is stated in the course of the same article that California passed a statute in 1929 authorising the court to call an independent expert to give his opinion subject to cross-examination by both parties, and it is added that during the short time it has been in force it has worked well.

Universal Finger-print Registration.

BECAUSE MANY modern scientific devices are employed in the detection of the guilty it should not be forgotten that they may often be just as useful in the defence of the innocent. A blood-pressure test may show in one case a strong probability of the excessive consumption of alcohol, but in another it may show a strong probability of shock, and the impossibility of an excess of alcohol. Finger-prints have helped to detect and to convict innumerable guilty people, but every now and again they disprove a charge made against an innocent person. Whether English people, who hate all forms of registration, would calmly submit to a national system of identification and registration by finger impressions may be open to doubt. That it could serve a variety of useful purposes can easily be demonstrated, and the real question is whether it would be worth all the expense, trouble and irritation. Captain J. MORGAN-GRIFFITHS, formerly of the South African Criminal Bureau, in a recent lecture, showed that there is really no reason for confining finger-print methods of identification to the criminal classes. He instanced the identification of persons who lose their memory and with it their identity, of the bodies of persons found dead, of persons using passports and of persons dealing with banks. Finger-prints remain of the same characteristics throughout life, they have never been found to be the same in two individuals, and, we should suppose, they could be of the utmost assistance in the prevention of forgery, the misuse of passports or documents of identity, and of similar crimes. They would naturally be of no less use to innocent people who had difficulty in establishing their own identity, whether it were in order to disprove an accusation, to establish a claim, or to fulfil any other lawful purpose.

A Cheque to a Card-sharper.

THE CASE OF *National City Bank* v. *Jones*, reported in *The Times* of 22nd October, is both of popular and legal interest, though neither statute nor authority appears to have been cited or discussed. The plaintiffs sued on a stopped cheque drawn by the defendant, who alleged, without contradiction, that it was given in part payment of a gaming debt, and moreover was obtained by fraud. He had in fact fallen into the hands of a gang of card-sharpers, whose ancient method is very well explained in the report. This had happened on a voyage, and for several days straightforward bridge for low stakes was played. Then, in the usual manner, one of the gang proposed a quick round game, and the pool by repeated doubling grew to £200, probably in a minute or two. The defendant drew a king, and, in effect, betted the pool that the next card would not beat it—a long "odds on" bet in fair play. Since, however, it was not fair play, the next card was an ace, and he lost. He gave the sharpers £100 and his cheque for £100. One of the gang gave the cheque to the plaintiffs' Paris branch, and they credited its face value to him at once, and he drew the money and disappeared. Meanwhile the defendant, realising he had been cheated, had stopped the cheque. He had, of course, ample reason for doing so against the drawee, but the bank claimed to be holders for value in good faith, presumably relying on s. 29 of the Bills of Exchange Act, 1882, though it is not mentioned in the report. The plaintiffs, however, did not call the actual official who had dealt with the card-sharper, and BRANSON, J., held that, the burden on the bank being to prove good faith, and not on the defendant positively to establish bad faith, the action failed. What would have happened if the right man had been called by the plaintiffs cannot, of course, be conjectured, but there are a number of cases where people taking negotiable instruments from "shady customers" have recovered on them, such as *Raphael* v. *The Bank of England* (1855), 17 C.B. 161. "Byles on Bills," 19th ed., p. 126, quotes an opinion given by ESHER, M.R., to a former editor of the work: "If the plaintiff (or party giving the value relied on) can be called, no jury would, I think, be satisfied unless he is called to say he has no knowledge of the fraud. But if he be dead, or cannot be called, proof of his having given full value would of itself be strong evidence of *bona fides* and ignorance of the fraud, there being no suspicious circumstances." To the extent that the duty was cast on the bank to call their official, BRANSON, J., has agreed with Lord ESHER. The victims of card-sharpers cannot always, however, expect that the expedient of stopping cheques drawn to them will be successful.

Family Courts.

[CONTRIBUTED.]

AT the Annual Provincial Meeting of The Law Society at Folkestone a paper was read on "Courts of Domestic Relations." This was the first paper read before the Society by a woman, a fact of such importance as to make the contents of the paper a matter of minor consideration.

An excellent report appears in THE SOLICITORS' JOURNAL of 24th October and nothing but abject panic at the possible effect of Miss MORRISON's suggestions ever becoming law could justify anything so ungallant as criticism of this lady's maiden effort.

There are, however, aspects of the American point of view which she champions so enthusiastically, which are foreign to the cautious school of thought which has produced our own legal system.

Miss MORRISON, as she pointed out, is not a Parliamentary draughtsman, but it is with her principles, not her draughtsmanship, that this criticism is concerned.

She wishes to set up tribunals for the adjustment of matrimonial difficulties which shall include the following features: pleasant waiting-rooms and expert women secretaries, investigators, probation officers and psychopathic research artists, doctors, alienists and trained nurses, clerks and typists.

The president is to be a barrister or solicitor, but apparently he will be chosen not so much for his knowledge of law as for his tact and common-sense and general ability to deal with delicate situations.

If such is to be the composition of the court, it is important to study its jurisdiction and powers.

The court is to sit *in camera*; it shall have power to enforce its orders; and it is to be allowed great latitude in the rules of evidence. The scope of its work will include Married Women, Adoption, Guardianship of Infants and Bastardy.

The suggestion is startling. Take, for example, an application for an affiliation order.

No one who is familiar with these applications can be unaware that women often bring false charges and that men often falsely deny their responsibility.

In the Court of Domestic Relations, however, this issue, one of the utmost seriousness to each party, is to be tried in secret, by a president, not so much skilled in law as full of tact, assisted by a band of psychologists and well-meaning busybodies, who have made private investigations on which to base opinions. These opinions are made admissible by throwing overboard rules of evidence evolved by centuries of careful study of the danger of listening to matters which are not proof.

In Juvenile Courts to-day lax and dangerous practices are sometimes indulged in. Written reports, for example, are sometimes handed in, expressing opinions of "investigators," which are not communicated to the person charged. Such things should, for safety's sake, be watched for, and, when detected, stopped. It would be reckless to repeat and legalise dangerous irregularities.

This is how Miss MORRISON would deal with the matter:—

> "In trying the case the President shall have before him" (not, be it observed, "shall have proved" or even "read aloud") "the investigators' report and a medical report, if the parties were willing to submit to a medical examination. If they were not, he shall have *power to order* a medical examination."

Miss MORRISON has discovered by experience that, in England at all events, matrimonial trouble is not always the fault of the husband, and she is entitled to the greatest credit for the discovery, but it is perhaps possible that she has not worked out exactly what her suggested reform imports, and how far it would take her.

It is true that the importance and volume of family cases keep courts fully occupied. Let her, however, in the name of common sense, not imagine that she is going to help matters by entrusting these very serious problems to tactful and well-meaning theorists, who are indifferent lawyers and who are armed with full powers and unrestrained by the safeguards of publicity and rules of evidence.

Pleasant waiting-rooms are not the whole solution of unhappy marriages!

Sole Selling Agent.

CARELESS drafting of written agreements, with its inevitable consequences, is unhappily too frequent; what is perhaps rarer, but equally unfortunate, is the omission of quite simple stipulations which would avoid all ambiguity. A case in point, which has come up for judicial consideration on one or two occasions recently, is the inclusion in contracts of agency of the words "sole agents" or "sole selling agents," without any additional words or phrase to indicate whether the appointor of the sole agent has reserved to himself the right to dispose of his goods and so deprive the agent of the commission he might otherwise have earned. Too often agents are prejudiced in this way by the unwelcome efforts of their principals. An aggrieved attitude on the part of the sole agent is indeed decidedly logical, for his agreement obviously becomes of no more value than the paper it is writen on if he is to have no opportunity of earning his commission as a result of the principals' action. "It is quite open to a property owner," said Mr. Justice MCCARDIE recently in an important estate agency case (*Bentall, Horseley and Baldry* v. *Vicary*, 74 SOL. J. 862; [1931] 1 K.B. 253), "to agree that an estate agent shall have the sole right to dispose of the property and that no one else, whether another agent or the owner himself, shall deal with the property during the contract period. If, however, such a bargain is intended, then clear words must be used." So obviously simple is it to incorporate the few extra safeguarding words if the principal wishes to reserve to himself the right to sell or otherwise, that it is almost incredible that contract after contract is made without them.

In the case before Mr. Justice MCCARDIE (*supra*) the plaintiffs, estate agents, claimed commission or damages for alleged breach of contract from the defendant, a house owner, who, they said, had himself sold his house during the currency of the agreement under which he had appointed them "sole agents" for the sale of the property on special terms as to commission. His lordship held, first, that the plaintiffs were not entitled to commission, because they had failed "to introduce a purchaser" according to the terms of the agency agreement. He also held that they were not entitled to damages for breach of contract. The plaintiffs argued that it was an implied term of the contract that the defendant should not himself sell the property and so deprive them of the commission they might perhaps be able to make. Mr. Justice MCCARDIE thought that the court ought not to introduce an implied term into the contract unless such implication was needed for the business efficacy of the transaction, and he held that in that case there was nothing to prevent the business efficacy of the document by reason of the circumstance that the defendant was entitled to sell. It was also to be noted, he pointed out, that the contract did not say "I give you the sole right to sell," but only "I appoint you sole agents for the sale," which, said his lordship, was quite a different thing.

In *Snelgrove* v. *Ellringham Colliery Co.* (1881), 45 J.P. 408, the defendants, who were partners in a firm, appointed the plaintiff their sole agent for the sale of fire-clay goods on a fixed scale of commission in a specified district. Subsequently,

and while the agreement was still in force, one of the partners, acting as agent for the firm, himself did business in the plaintiff's district, and the plaintiff thereupon brought an action to recover commission on the sales effected by the partner in his district. It was held by Mr. Justice MATHEW that the defendants "were not entitled to appoint any other agent in the district, nor were they entitled to effect any sales or transact any business connected with the firm in the district, except through the plaintiff's agency." Referring to that decision in *Bentall, Horseley and Baldry* v. *Vicary* (*supra*) Mr. Justice MCCARDIE said: "This was held by MATHEW, J., to be a breach of the contract appointing the plaintiff sole agent. I think that the actual decision (if correct) does not go beyond that ruling, and that any apparent dictum of MATHEW, J., going further than that narrow decision on the special facts cannot be regarded as valid."

There appears to be some difference of judicial opinion on this question. In the most recent case of this character, *T. W. Lamb and Sons* v. *Goring Brick Co., Ltd.*, 75 SOL. J. 698, the defendants, brick manufacturers, had appointed the plaintiffs, builders' merchants, to be their "sole selling agents of all bricks and other materials manufactured at their works" for a period of three years from 21st April, 1927. In September, 1929, after about two-and-a-half years of the agreement had run, the defendants, through their auditors, wrote to the plaintiffs to the effect that in future they intended to sell all the bricks manufactured by them without the intervention of an agent. Thereupon the plaintiffs brought an action for damages for alleged breach of contract, and Mr. Justice WRIGHT held that the letter of September, 1929, was a repudiation and constituted a breach of the agreement of 1927. In giving judgment for the plaintiffs his lordship said that the words "appointed sole selling agent of all bricks manufactured at the defendants' works" meant that the plaintiffs were to have the sole right of selling all the bricks so manufactured. It did not appear to him that in a contract of that nature there was any need to import any additional term by implication. Referring to *Snelgrove* v. *Ellringham Colliery Co.* (*supra*), his lordship said that he did not think that Mr. Justice MATHEW intended to limit his judgment to a decision that the partner was selling as agent, and that therefore there was a breach of contract, he thought that that judge treated the sales or attempts to sell on the part of the partner as being the direct acts of the principals. "In my view," said Mr. Justice WRIGHT, "MATHEW, J., meant that the fact of appointing the plaintiff in the case before him as sole selling agent was to put the sole right of selling in the hands of that agent, just as in the present case I think that the effect of the language of this contract is to put the sole right of selling all the bricks in the hands of the plaintiffs."

Mr. Justice MCCARDIE and Mr. Justice WRIGHT would, therefore, appear to have differing opinions as to the true meaning of the decision in *Snelgrove's Case*, and, with respect, there does seem room for both opinions in view of the abbreviated report of the case and the short judgment attributed to Mr. Justice MATHEW. However, whatever may be the case, we end as we began, by suggesting the invariable insertion of a clause in this class of agreements which will ensure that there is no ambiguity. *Cave quid discis, quando, et cui.*

BRIGHTON CORPORATION BILL.

Mr. J. H. Rothwell, Town Clerk of Brighton, has received the congratulations of his council on the skill and care with which he piloted the above Bill through Parliament.

Mr. Rothwell characteristically remarked that his task would have been impossible without the assistance of Mr. G. D. Helliwell, the Deputy Town Clerk, to whom the General Purposes Committee recommended a grant of £250.

Company Law and Practice.

CI.

(*Continued from p.* 719.)

ALTERATION OF THE MEMORANDUM.—I.

SECTION 5 of the Companies Act, 1929, which deals with the alteration of the objects of a company, and the method of achieving such alteration, consists of seven sub-sections; it is only with the first of these that I propose to concern myself here this week. In all cases any alteration must be authorised by a special resolution of the company, but before calling the meeting to pass such resolution the company should consider whether the proposed alteration will fall within the scope of one of the seven branches of sub-s. (1), because, if it does not, the court will refuse to confirm it. The last two of the seven branches are new, and were not in the corresponding section of the Act of 1908.

But before proceeding to examine these seven branches, I would remind my readers that the section only permits the alteration of the objects of a company, and not of any other matter contained in the memorandum. This is illustrated by the case of *Re the Society for Promoting Employment of Women* [1927] W.N. 145. In that case RUSSELL, J., as he then was, would not permit the alteration of a clause in the memorandum which imposed a liability on the members in a certain event, on the ground that such clause was not in any way concerned with the objects of the company.

The first class of alteration permitted under the section is an alteration required to enable the company "to carry on its business more economically or more efficiently." Such alteration must not, however, alter its business as such. In *Re Cyclists Touring Club* [1907] 1 Ch. 269, WARRINGTON, J., as he then was, makes this point, at p. 274, where he says: "The alteration which is contemplated in that clause seems to me to be an alteration which will leave the business of the company substantially what it was before with only such changes in the mode of conducting it as will enable it to be carried on more economically or more efficiently." An alteration giving the company power to create a security was held to be within this clause in *Re Governments Stock Investment Co.* (No. 2) [1892] 1 Ch. 597.

The second class of alteration is an alteration required to enable the company "to attain its main purpose by new or improved means." Great stress was laid upon the words "main purpose" by CHITTY, J., in *Re Governments Stock Investment Co.* [1891] 1 Ch. 649, where he illustrates the point by saying that though the main purpose of an hotel company is to run an hotel, the memorandum may contain objects which no ordinary person would connect with an hotel. (As I have pointed out on a former occasion in this column, the memorandum also frequently contains the powers of the company, a distinction which may be of some importance when considering this section.) A company the main purpose of which is to invest in government securities would not be attaining its main purpose by new or improved means, were it able to alter its objects so as to permit a wider range of investment than in government securities only, but it does not, of course, follow that such an operation might not be brought within some other sub-clause; in this connexion compare the two *Governments Stock Investment Co. Cases* here referred to.

Section 5 (1) (*c*) permits an alteration of objects to enlarge or change the local area of the operations of the company, and the court, while readily approving of such an alteration, has sometimes only done so on condition that the name of the company is changed in order not to mislead creditors or others (see *Re Indian Mechanical Gold Extracting Co.* [1891] 3 Ch. 538; *Re Egyptian Delta Land Co.* [1901] W.N. 16). This condition is not always insisted upon; thus, in the case of *Re Trust & Agency Company of Australasia* [1908] W.N. 229,

the local area of the company was extended so as to embrace not only Australasia, the original sphere of operations, but also Argentina, and EVE, J., refrained from imposing a condition as to change of name. There was no opposition to the petition, and the circumstances were somewhat unusual, in that the company held numbers of mortgages of lands in countries where the titles were registered, and a change of name would have involved considerable expense as well as difficulty in enforcing the securities; and it is still true to say that, in an ordinary case of such a character, a change would be required.

The fourth ground for alteration is to enable the company to carry on some business which under existing circumstances may conveniently or advantageously be combined with the existing business of the company. The leading case on this clause is *Re Parent Tyre Co.* [1923] 2 Ch. 222, where P. O. LAWRENCE, J., points out that the fact that the new business is entirely different from that carried on by the company at the time of the petition, is immaterial; the only material point is to determine whether such new business can be carried on conveniently or advantageously with the business of the company already being carried on. Whether this is so or not is a matter of business, and is for those carrying on the business to decide. But care must be taken to see that such new business is not inconsistent with the existing business: *Re Cyclists Touring Club* [1907] 1 Ch. 269.

(*To be continued.*)

A Conveyancer's Diary.

By ALFRED J. FELLOWS, M.A., Barrister-at-Law.

Statutory Commencement of Title.

Section 44, sub-ss. (3) and (4), of the Law of Property Act, 1925, appear to contain an ambiguity by reason of the effect of a case decided on the Conveyancing Act, 1881, namely, *Gosling* v. *Woolf* [1893] 1 Q.B. 39. These sub-sections, taken together with sub-s. (5), which relieves purchasers or lessees from notice of superior title when, under the previous sub-sections, they are not entitled to call for it, were no doubt intended to avoid hardship of the kind exemplified in *Patman* v. *Harland* (1881), 17 C.D. 353. In *Gosling* v. *Woolf*, however, on the similar wording of the Conveyancing Act, 1881, Pollock, B., decided that the words "leasehold reversion" in s. 3 (1) meant the reversion of that leasehold interest out of which the term of years contracted to be sold or assigned was derived. The effect of that decision was that the under-lessee was entitled to call for his immediate lessor's title, which perhaps was not the intention of those who framed the Act. This might have afforded protection under the Act of 1881, but, if applicable under the later Act, would have a contrary effect, for it would infect the intending lessee with notice of his immediately superior title if he was entitled to call for it, because he would lose the protection of sub-s. (5). Sub-section (3), in conjunction with sub-s. (5), appears definitely to have the desired effect of barring the purchaser of a sub-lease from notice of the title of the head lessor, and "leasehold reversion," in that sub-section, can only mean the reversion to the sub-lease. In sub-s. (4), however, there are two reversions to be considered, namely, the reversion to the sub-lease and the reversion to the sub-sub-lease about to be granted. The intention, it may be supposed, was to preclude investigation of the title of the immediate lessee, namely, the sub-lessee. The sub-section is as follows: "On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reve sion, the intending lessee shall not have the right to call for the title to that reversion." The issue is whether the last reference is to the reversion of the sub-lease, or of the sub-sub-lease, presently to be granted. If *Gosling* v. *Woolf* is applicable—and it does not seem easy to exclude or distinguish it—"that reversion" means the reversion to the sub-lease, not the sub-sub-lease, and the sub-sub-lessee is entitled to call for his immediate lessor's title. The other construction would also involve the use of the words "leasehold reversion" in sub-ss. (3) and (4) in different senses, namely, as "reversion to sub-lease" in sub-s. (3) and "reversion to sub-sub-lease" in sub-s. (4). The matter appears to be one which needs clearing up, and it seems a pity that words were not used in sub-s. (4) to make it quite clear that *Gosling* v. *Woolf* did not, and was not meant to, apply to it.

Landlord and Tenant Notebook.

Lessee's Liability for Costs of Lease.

In the absence of any contract, the liability of a tenant to pay for the lease depends entirely upon custom. ("Usage" would be more accurate but text-books and other authorities generally employ the word "custom.") The leading case on the subject is *Grissell* v. *Robinson* (1836), 3 Bing. N.C. 10, in which three witnesses were called to speak to the custom; their testimony does not appear to have been challenged. The same applies to the decision itself; this is perhaps remarkable, because either a custom or a usage must be shown to be reasonable, and, as readers know, a good many people are inclined to question the reasonableness of this particular rule.

One reason why this point has never been raised may be that the rule is not of universal application. It certainly obtains in London, but a questionnaire issued by The Law Society to local Law Societies a few years ago revealed a considerable divergence in different parts of the country. In 1835 and 1865 the Council had issued Opinions to the effect that the general usage of the profession on the granting of a lease was that the solicitor of the lessor was entitled to prepare the lease and counterpart at the expense of the lessee, unless there was an agreement or a usage universally prevalent in a particular locality to the contrary. In 1900 an Opinion that local custom should govern the matter, but that if there were no local custom, that of London should prevail, was recorded. The replies sent in by local societies show that in many cases it was the practice for costs to be shared; in some cases the rule was not applied when a purchase was made by way of lease; in another district solicitors habitually tried to induce landlord clients to forego half the costs, etc.

Local custom was in fact invoked in a county court case, *Higley* v. *Reynolds* (1894), 38 SOL. J. 401, when only half costs were claimed from the lessee. The local custom was proved by the president of the local society (Herefordshire) and three other witnesses; a resolution passed by the society a few years before was admitted as evidence, but it was said that the resolution amounted to no more than a record.

In an Opinion given in 1900, the Council of The Law Society advised that when parties resided in different districts with different customs, that obtaining in the district where the property was situated should apply.

It will be observed that the Opinions of 1835 and 1865 would make the tenant liable, not only for the costs of the lease, but also for those of the counterpart. In 1895 the Council again voiced its opinion that the lessee was by custom liable to pay for the counterpart unless there were a local custom to the contrary. The courts have not recognised this custom, and further, in cases in which a contract has been relied on no counterpart has been allowed for unless specifically mentioned. The leading case is *Jennings* v. *Major* (1837), 8 C. & P. 61, in which the agreement for the lease had provided that the landlord would, at the request and costs of the tenant,

grant and execute to him "a lease." The defendant's own solicitor swore that in his experience of such agreements, the landlord always paid for the counterpart; he was corroborated by a chief clerk in the Chancery Master's office, formerly a solicitor, who said that in his former practice and in his present position (when taxing conveyancing bills) it was usual for the landlord to pay, though he admitted that there was some diversity of opinion on the matter. The court held, as a matter of construction, that the counterpart could not be charged for. Custom was not dealt with in the judgment. In *Re Negus* [1895] 1 Ch. 73, in which the main controversy centred round the question whether the scale introduced in 1881 applied to an agreement in which it was not mentioned, it was held that the scale did apply, but that in charging the tenant the "reasonable costs" of the counterpart must be deducted. In 1900 the Council of The Law Society took the opinion of Sir Benjamin Cherry, who said that the view of the Council would probably prevail in the higher courts if the evidence as to usage given in *Jennings* v. *Major*, *supra*, could be shown to be wrong. In their replies to the questionnaire referred to above, several local Law Societies report that in their districts *Re Negus* is ignored in practice; in other districts it has been followed. (In *Re Gray* [1901] 1 Ch. 239, the court applied *Re Negus*, disallowing the costs at a counterpart in a case in which there was no special agreement.)

It does not appear from the answers, however, whether this decision is ignored both in cases in which there is an agreement and in cases in which custom is relied upon. The distinction is, I think, important. In the case of agreement, the question is necessarily largely one of construction; but if a usage be relied upon, the question of reasonableness may be raised, and it would be pertinent to quote a remark made by Denman, C.J., in the course of the argument in *Jennings* v. *Major*, *supra*: "Can you charge for the counterpart? It is for the security of the landlord." The counterpart can, without great inconvenience, be dispensed with, secondary evidence of the lease being admitted if the part were lost; and those responsible for the Stamp Act, 1891, may have recognised that a danger of taxing it out of existence, for the fact that the duty never exceeds five shillings, suggests that a counterpart is to be regarded as a luxury. Opinions expressed by The Law Society ought not, I think, to affect the position. The matter concerns the profession indirectly only, when custom is invoked; for in such a case the landlord's solicitor cannot sue the tenant direct; it is the landlord who must sue for money paid to the use of the tenant.

Correspondence.

Bar Mess. Central Criminal Court.

Sir,—Will you kindly note that the annual dinner of the Central Criminal Court Bar, usually held early in the new year, will not take place.

3, Plowden-buildings, Temple, E.C.4.
23rd October.

ALBERT CREW, Secretary.

"A Conveyancer's Diary."

Sir,—We have read with interest the articles by Mr. H. W. Clements with regard to the appointment of new trustees for the purposes of the statutory trusts, and we particularly note his view that, as a matter of practice, it will be wise in appointing a new trustee when property is held upon the statutory trusts to state specifically that the new trustee is appointed for the purposes of those trusts.

We should be interested to know who would be, in the opinion of your contributor, the proper persons to appoint the new trustee where by the instrument a person is nominated for the purposes of appointing new trustees, and also whether the vesting declaration should be express or implied.

London, E.C.4.
22nd October.

"WATLING."

Finance (No. 2) Act, 1931.

Sir,—We call the attention of any of your readers who may be advising clients with regard to their allowances, to what is apparently a serious error in the Finance (No. 2) Act, 1931. The 4th Sched. to that Act (dealing with amendments of enactments relating to reliefs from income tax) provides that, as regards relief from balance of tax chargeable after allowance of other reliefs, the words "one half" and "£175" shall be respectively substituted for the words "Five ninths" and "£250" wherever they occur in the Finance Act, 1927, s. 40 (2). As a matter of fact, neither the words "Five ninths" nor "£250" occur in the section referred to, and one is left in the dark as to what the allowances really are.

It is not surprising that there should be mistakes in legislation carried out under pressure of time, but an authoritative explanation should be given pending an amendment of the Act.

Tavistock-square, W.C.1.
26th October.

SCADDING & BODKIN.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Sir John Jervis died on the 1st November, 1856, having presided since 1850 in the Court of Common Pleas. Called to the Bar in 1824, he reported cases for six years in the Court of Exchequer, and it was only in 1846 that he became Attorney-General in succession to Sir Thomas Wilde. Four years later, he again succeeded him as Chief Justice of the Common Pleas, when Wilde was promoted to the Woolsack with the title of Lord Truro. It was during the period that Jervis was Attorney-General that Lord John Russell conceived the idea of cutting the Chancellorship in half, offering him the political moiety—the Speakership of the Lords with a peerage and the title of Lord Keeper. The scheme, which fell through, was designed as a sort of consolation prize, following the rejection of his claim to the Chief Justiceship of the King's Bench on the death of Lord Denman. Jervis was a fine judge from every point of view, with a most acute understanding and a sense of hearing inconveniently sharp for counsel who whispered private observations in court.

EVIDENCE OF MEANS.

His Honour Judge Tobin has held that "a large house is no indication of means in these days when so many people with large houses are on the rocks." Modern metaphor seems thus to have destroyed the point of the scriptural parable about the man who built on rock and the man who built on sand. But a Divisional Court has gone yet further in the matter of proof of means in a case only reported orally, as far as I know, by the well-known Mr. Commissioner Kerr, of Old Bailey fame. The court refused to commit a debtor, arrested while entertaining his friends to a champagne supper, on the ground that this was no proof of affluence, as the meal might have been supplied on credit.

LAWFUL POLITICS.

This most eventful election has seen as many lawyers as usual fighting to win a political verdict, although the glitter of the legal prizes beyond a Parliamentary seat is somewhat tarnished of late. Nor can all hope to be Law Officers enjoying the reversion expectant of even more honourable places.

Nevertheless, for those also of modest ambition, the road through Westminster sometimes provides the shortest distance between two given points. Take, for example, the case of Shiress Will, K.C., whose fleeting political career was thus summed up:—

"Some serve their party capturing a seat.
Some indirectly, suffering defeat,
But few have served a cause so well as he
He sat, retired and left a vacancy."

This little verse celebrated his feat of capturing Montrose Burghs and in a short space courteously surrendering it for the benefit of John Morley who had been unexpectedly unseated elsewhere. Not very long afterwards, Shiress Will was accommodated with a County Court judgeship but, as if leaving a vacancy had become part of his constitution, he unfortunately died before he had time to settle down in the purple.

DIVERS ASSIZES.

At the Oxford Assizes, Mr. Justice Swift was obliged to rebuke an indecorous burst of laughter and to threaten to clear the court. That is the only way to deal with mirth *en masse*, but Stephen, J., once ordered a person who exhibited an improper sense of humour to spend the rest of the trial in the dock beside the prisoner. This month Oxford, in the matter of sustaining the legal profession, is far ahead of Cambridge, which could only offer the seven learned counsel who attended the Assizes two prisoners, neither of them legally represented and both pleading guilty. One was, however, advised by Horridge, J., to withdraw his plea.

Reviews.

Revenue Procedure and Practice. By SIDNEY A. LYNN, of the King's Remembrancer's Department of the Supreme Court, Fellow of the Chartered Institute of Secretaries. pp. xi and (with index) 178. London: Sweet & Maxwell, Ltd. 12s. 6d. net.

It is really difficult to over-estimate the practical value of this book to those whose business is in any way associated with the revenue side of the King's Bench Division. Rarely has a treatise been so obviously filled, from cover to cover, with so much vital and detailed information of real utility to the practitioner. This may sound exaggerated praise, but when the real necessity for a work of this description is realised, a work on a subject which is admittedly one of the most difficult with which the courts have to deal, it will be appreciated that the author has indeed supplied a long-felt want; the legal profession has, as he points out, suffered from the absence of any commentary on the subject. It is true that he has restricted the subject-matter to the writ of *subpœna ad respondendum*, but since that is the originating process of over 90 per cent. of the annual total of suits on that side of the King's Bench Division the book loses little or nothing of its value by that limitation. It would be difficult to select any particular section for express comment, for the book deals adequately with the whole range of the subject in a *connected*, interesting and instructive manner. One can only wish with Mr. Justice Rowlatt, who has written a foreword to it, that it will achieve the success it deserves. Perhaps one criticism may be allowed, and that is that an alphabetical table of the decided cases referred to would have increased the book's value.

Elements of the Law of Contract. By W. G. H. COOK, LL.D. (Lond), of the Middle Temple, Barrister-at-Law, assisted by JOHN W. BAGGALLY, M.A. (Oxon), of the Inner Temple, Barrister-at-Law. London: Butterworth & Co. 5s. net.

Of the common law subjects the law of contract is quite the most difficult to expound in an elementary manner. In some minor fields there are as yet no decided cases and in others the authorities are in conflict. Further, there are numerous statutes whose treatment calls for a nice use of an author's selective power, so that in the result the book may be neither overloaded nor incomplete.

Because of these things it is always interesting to review a new work of the kind to see if the author has "brought it off" or not. In the writer's view Mr. Cook and Mr. Baggally have produced a well-balanced book which should be of great use to students who are beginning to study the law of contract. For example, the section on Negotiation may very profitably be read by such before and after penetrating the maze which is created by fuller treatment of the subject of bills of exchange in larger text-books. An attractive feature of this book is tabulation of the salient points belonging to the various subjects treated, with cross-references to the pages where details are to be found.

Books Received.

What Price Jury Trials? By IRVIN STALMASTER, LL.M., formerly District Judge, Fourth Judicial District of Nebraska; Assistant County Attorney, Douglas County, Nebraska; Instructor, Constitutional Law, University of Omaha; Assistant Attorney-General, State of Nebraska. 1931. Crown 8vo. pp. ii and 143. Boston (Mass.): The Stratford Company. 2 dollars.

Income Tax and the Business Man (including Surtax). A Concise Guide to Assessment and Relief by K. ADLARD COLES, M.A., A.C.A. 1931. Crown 8vo. pp. xvi and (with Index) 84. London: Crosby Lockwood & Son. 2s. 6d. net.

The Law Quarterly Review. Vol. XLVII. No. 188. October, 1931. London: Stevens & Sons, Ltd. 6s. net.

Obituary.

MR. W. T. MOORE.

Mr. William Tyndale Moore, of 4, Alma-terrace, Kensington, who passed away quite suddenly on Saturday last, 24th October, in his seventy-eighth year, had been a practising solicitor for over fifty years, and for a long period was a partner in Messrs. Joynson-Hicks & Co., Lennox-house, Norfolk-street, W.C. He was formerly solicitor to the London General Omnibus Co. Ltd., and for the past few years had been associated with Mr. Wilberforce Jackson, solicitor, of High-street, Croydon, and was in harness up to the time of his death. He leaves an only child, Patricia, wife of Col. W. T. Vigers, of Alma-terrace, Kensington. The burial took place on Wednesday, at Bromley Hill Cemetery.

MR. JOHN GRAHAM.

Mr. John Graham, solicitor, Bournemouth, who died at his residence there recently, was admitted in 1855, and was believed to be the oldest coroner in the country, having been appointed by public vote in 1873.

MR. R. M. BROWN.

Mr. Robert Montague Brown, solicitor, Sheffield, who had practised there for fifty years, died on the 9th October, at the age of seventy-eight. Admitted in 1876, he was president of The Sheffield Law Society in 1906.

MR. FRANCIS B. McCREA.

Mr. Francis Bramston McCrea, solicitor, for over thirty years Registrar of Plymouth County Court, died on Tuesday from double pneumonia at the age of sixty-three. He was a prominent member of the Royal Western and Royal South Western Yacht Clubs, Plymouth.

POINTS IN PRACTICE

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

The Rents Act, 1920, s. 12 (2) (iii)—Land let with a House—Applicability of Act.

Q. 2321. A question has arisen as to whether a house and land, let on a yearly tenancy at the annual rental of £10, is controlled. With reference to the wording of the above sub-section, there is of course no "rateable value" of land in these days. The assessment of the property now stands in the current valuation list as follows: House and garden (2 roods 6 poles in extent), rateable value £4; orchard (3 roods 4 poles), net annual value £2 17s. The last time the land had a "rateable value" the figure was of course *one quarter* of the sum above given as the present "net annual value."

A. Rateable value is defined in the same section, (1) (*c*), as rateable value on 4th August, 1914, unless the context otherwise requires. Sub-section (2) (iii) does not appear to "otherwise require." We do not think there is any doubt that the fact that agricultural land has now no rateable value has no bearing on the question.

Enfranchised Copyholds—One Tenant of two Manors with a common Lord—Compensation Agreement.

Q. 2322. A is the owner of two adjoining farms, each of which is subject to manorial incidents in two different manors, the lord of the manor in respect of both manors being the same. In the event of A wishing to extinguish the manorial incidents, can this be carried out by one compensation deed, the steward's compensation and conveyancing costs being based on the lord's compensation in respect of both manors?

A. Provided neither farms nor manors are held upon different trusts, there seems no reason why one compensation agreement should not embrace both farms. With regard to costs, our subscribers are referred to "Everyday Points in Practice," Pt. III, s. 8, case 12, p. 261, where the position is discussed at some length. It is difficult to advise definitely, but the better opinion would appear to be that the remuneration should be based as if there were separate agreements with separate compensation money.

Estate Duty—Cesser of Annuity.

Q. 2323. (1) A dies leaving B an annuity of £100 a year. B subsequently dies leaving £500,000 property. In winding up A's estate the succession duty table value of B's annuity was deducted on the residuary account from the residue, legacy duty having been paid on that amount for B's annuity under the ordinary form No. 2. On the death of B the authorities claimed estate duty on the capital value of the annuity on the ground that A's estate benefits by the cession of the annuity. Duty is, however, claimed on the capital value of B's annuity, but at the rate applicable to B's estate plus the capital value of the annuity. This is believed to be legitimate, but no authority can be found.

(2) Is it correctly understood that an alternative method could have been pursued by A's executors, namely, legacy duty paid as before on the succession duty table value of B's annuity, but instead of that value being deducted from the residue of A's estate there should have been deducted the capital value of the annuity and, on the net residue, legacy duty paid in full, and in such a case is it correct to say that no estate duty but only legacy duty could be claimed on the death of B on, of course, the capital value of the annuity as an accession to A's estate?

A. (1) Presumably B was not the wife of A and we are afraid therefore we must say that the claim is correct, unless A died before the Finance Act, 1900, and before that day there was a mortgage or sale of the interest in expectancy, i.e., of the property subject to B's annuity (see s. 12 of that Act).

(2) The method in which the annuity was valued for ascertaining the legacy duty of A's residuary estate would not affect the payment of estate duty on B's death, but only the question of succession duty.

Deceased Lunatic—Grant of Administration to Syndic of Local Authority.

Q. 2324. A is a person of unsound mind, in respect of whose estate a receiver has been appointed. A died on the 27th February, 1931, a spinster intestate. B, the local authority, is by far the largest creditor of the estate, which is insolvent. B is desirous of taking out letters of administration to the estate. Has B power to do this, and if so, should a syndic be appointed to take administration on its behalf?

A. A grant to a syndic of the authority appointed by resolution may be made after citation of all the persons who would be entitled in distribution under the A. of E.A., 1925, and service on the Treasury Solicitor.

Relatives Living with Tenant of House—Ejectment.

Q. 2325. A is the wife of B. A is the owner of a house which she has let to C (her father) at a rent exceeding £20 per annum. A and B live with C without rent. B has made himself objectionable to C who wishes to eject him from the house. Can he take proceedings before the justices to eject B, notwithstanding that C pays over £20 a year rent. It is contended that B cannot avail himself of the Rent and Mortgage Interest Restrictions Act, 1923.

A. We know of no authority against the proposition that the tenant of rooms in a house can be ejected by means of proceedings under the Small Tenements Recovery Act, 1838. But it would be essential to prove a tenancy of a defined portion of the house, either at will or for a definite tenancy, which has expired or been determined. The rent of the house itself would be immaterial. If A and B simply live with C, having no defined portion of the house let to them, the case would not be within the Act. If B does not pay any rent he cannot avail himself of the Rent Restrictions Acts.

Distraint for Income Tax.

Q. 2326. The income tax collector threatens to distrain on the tenant-occupier of premises for arrears of income tax up to April, 1931, such occupier having become the tenant since that date. The rent exceeds £1 per week, and the tenancy is weekly, but the arrears were incurred at a time when the premises were let on lease. The owner is unable to pay and the mortgagee, who is about to take possession, does not wish to pay, as he has already allowed the tax to the owner. It is submitted that r. VII, 3 (*b*), protects such occupier, and that such protection is not interfered with by r. VIII, 7 and the following sub-sections which, it would appear, apply only to cases provided for by r. VII, 8 (*b*), (*c*), and 9 (1). Is this submission correct?

A. The opinion is given that the submission is correct, as the fact that the tenant is given a right of re-imbursement against the landlord does not imply that the tenant is compelled to pay the tax in the first instance.

Notes of Cases.

Judicial Committee of the Privy Council.

Kossekechatko and Others *v.* **Attorney-General for Trinidad.**

Lord Dunedin, Lord Blanesburgh, Lord Atkin, Lord Russell of Killowen and Lord Macmillan. 22nd October.

TRINIDAD—EXTRADITION—FUGITIVE CRIMINALS FROM FRENCH GUIANA—*Habeas Corpus*—NO PROOF OF PLACE OF CRIME—INVALID DETENTION ORDER.

This was an appeal *in forma pauperis*, by special leave, from a judgment of the Supreme Court of Trinidad discharging writs of *habeas corpus ad subjiciendum* and remanding the appellants in custody, under a warrant dated the 6th November, 1930, until the Governor's pleasure should be known. The appellants, Gregoire Kossekechatko, Cirille Albert Caullier, and Pierre Robert Retzenger, were three fugitives from the penal settlement in French Guiana (Devil's Island), who, on the 7th August, 1930, with six other men, reached Trinidad in a small boat and were arrested under the provisions of the ordinance dealing with suspected fugitives from French Guiana. The grounds of the appeal were (1) That there was no evidence that the appellants or any of them had been convicted of any crime committed within the territory of France; (2) that there was no evidence that they or any of them had been convicted of any crime within the schedule of the Extradition Act, 1870; (3) that the warrant and order of detention were in the wrong form, and did not show that the court before which the extradition proceedings were taken decided that any of the appellants had ever been convicted of any crime, but merely that there was reasonable cause to suspect that they were fugitive criminals from French Guiana; and (4) that the warrant and order were signed by a magistrate other than the magistrate who heard the case.

Lord RUSSELL OF KILLOWEN, giving the reasons of the Board for allowing the appeal, referred to the documents which contained the conditions of, and the procedure relating to, the extradition from Trinidad of fugitive criminals from French Guiana, and said that in their lordships' opinion none of the appellants was liable to be extradited under the treaty unless the crime of which he was convicted was in fact committed within the territory of the French Republic. In the case of each appellant his conviction in France did not necessarily involve that the crime of which he had been convicted had been committed in the territory of the French Republic, and it was admitted that no such proof was tendered in the case of any of the appellants. The omission to prove that essential fact (if it were the fact) was, in their lordships' opinion, fatal to the validity of the order of the 6th November, 1930, even if in other respects it were beyond reproach. It was, however, the wrong order to make, and it was made by the wrong person, namely, by a magistrate who had not heard the evidence. The appeal was allowed and the appellants released from custody.

COUNSEL: *D. N. Pritt*, K.C., and *Horace Douglas*, for the appellants; *Sir Stafford Cripps*, K.C., and *Kenelm Preedy*, for the respondent.

SOLICITORS: *Lawrence Jones & Co.*; *Burchells*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Court of Appeal.

In re **May**; **Eggar** *v.* **May.**

Lord Hanworth, M.R., and Lawrence and Romer, L.JJ. 16th October.

WILL—CONSTRUCTION—LEGACY VESTING AT A PERIOD SUBSEQUENT TO LEGATEE'S MAJORITY ON CONDITION OF NOT BEING A ROMAN CATHOLIC—PRESUMED ELECTION OF RELIGION UPON ATTAINING MAJORITY.

Appeal from Luxmoore, J.

A testatrix bequeathed a legacy of £5,000, free of all duties, to her general trustees upon trust to invest and until her nephew, M. May, attained the age of twenty-four or the trust in his favour should become incapable of taking effect to accumulate the income and pay the income when he attained that age to him for life, "provided that he shall not be a Roman Catholic at my death or being a Roman Catholic at my death shall cease to be a Roman Catholic before the expiration of twelve calendar months after my death until he shall after my death become a Roman Catholic." There was a gift over in favour of Oxford University in the event of the failure of the gift for the benefit of M. May. She died in 1915, and on a summons then taken out it was held by Neville, J., in *In re May* (1917) 86 L.J. Ch. 698; [1917] 2 Ch. 126, that the matter could not be determined until the legatee, then an infant, had attained his majority. He having attained twenty-four years and having at all times been a Roman Catholic, a summons was taken out asking how the legacy with accumulations was payable. Luxmoore, J., held that owing to M. May being a Roman Catholic, it was payable to the trustees of the University. M. May appealed. The court dismissed the appeal.

Lord HANWORTH, M.R., thought that Neville, J., was right in holding that M. May could not, in the eyes of the court, be a Roman Catholic until he was of age. That meant that the court, in its care for the interests of an infant, would not let what had been done in the selection of his religion, albeit with his approval, deprive him of possible benefits under a will until he was of an age to judge for himself. Therefore, in law, M. May was not a Roman Catholic at the death of the testatrix, nor twelve months later. It was then said that as M. May had always been a Roman Catholic he could not "become" one, and the forfeiture entailed by the words "until he shall . . . become a Roman Catholic" failed. But in effect he did become a Roman Catholic, because when he was of age and the responsibility of making the selection of his religion fell upon him he did elect to be a Roman Catholic. The law did not deem him to be Roman Catholic as an infant, so as to deprive himself of benefit, but when he attained his majority he became a Roman Catholic in the eyes of the law.

COUNSEL: *Vaisey*, K.C., and *Francy*, for M. May; *Morton*, K.C., and *Montgomery White*, for Oxford University; *Spens*, K.C., and *Eversheds*, for the trustees.

SOLICITORS: *Slaughter & May*; *Somerville, Philpot & Co.*, for *Morrell, Peel & Gamlin*, Oxford; *Thomas Eggar & Son*.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

JUDGE AND HIGHWAY CODE.

Judge Turner and a motorist had a long conversation about the Highway Code at the Westminster County Court recently, and the judge suggested that the code was only "a guide for sane people" and that motorists should learn a little English law.

The motorist told the judge that he gave a particularly long hoot before turning, as he always did, and that he had been driving seventeen years without a collision. It was an unfrequented street.

Judge Turner: And something may always be coming out of an unfrequented street.

The Motorist: According to the Highway Code one should give way to the other.

Judge Turner: That does not entitle A or B to run into the other. Is the Highway Code an Act of Parliament?

The Motorist: No.

Judge Turner: Then it only exists as a guide for sane people. Because a man gets no answer to his horn and goes buzzing across a street at any pace he likes and has a smash that does not entitle him to damages, nor does the Highway Code. I know numbers of motorists who act on their highway code, sound their horns, and dash across. The sooner you motorists learn a little English law the better, instead of thinking you can drive as you like in the streets.

The Law Society at Folkestone.

ANNUAL PROVINCIAL MEETING.

(*Continued from p.* 731.)

Mr. CHARLES BERRY (Tunbridge Wells) read the following paper:—

THE DEBTS OF MARRIED WOMEN.

The title of this paper, "the Debts of Married Women," is, strictly speaking, a misleading one, for the reason that a married woman is legally incapable of rendering herself personally responsible for debts which she contracts in the sense that, taken literally, the person of a married woman is immune from the penal consequences of attachment or committal for non-payment of her debts.

Her debts may be divided into two classes. First, the debts which she contracts as agent for her husband, and secondly, the debts for which she is personally liable to be sued and which are recoverable—not from her personally—but out of her separate estate.

The first class of debts, namely, those which she contracts as agent for her husband, are not intended to be the subject of this paper; they will therefore be very shortly referred to and you will then be asked to disregard them.

The debts which a married woman contracts as her husband's agent depend upon the presumption of her authority to pledge her husband's credit, a presumption founded upon cohabitation and confined to necessaries, and, like all presumptions of law, capable of being rebutted by contrary evidence of facts.

There was in 1929 a small epidemic of these cases, two of which will no doubt be within your recollections, viz., *The Mayfair Hotel Company* v. *Lord and Lady Falkland* and *Christabel Russell Limited* v. *Sir James Heath and Wife*. The first was in respect of a ball given to celebrate the "coming out" of the daughter of Lord and Lady Falkland, and the second was in respect of wearing apparel supplied to Lady Heath.

In both cases the plaintiffs failed to succeed against the husbands and judgments were entered against the wives. In both cases the presumption was rebutted by the facts, but in the ordinary case, where there is no evidence to the contrary and where there exist the essential conditions of cohabitation and of the order being in respect of suitable necessaries, the husband is liable and the wife is not liable, and so such debts are extraneous to the subject-matter of this paper and you are asked to dismiss them entirely from your minds.

Now in both of those cases which have been referred to, judgment was entered against the wife, and there are numbers of everyday cases in which a married woman is sued for a debt contracted on her own account and in which judgment is obtained against her, and the first matter to which your attention is particularly directed is the form of judgment issued in such cases.

The form is, of course, well known to you, but for our purpose it is desirable in the first place to contrast it with the ordinary form of judgment applicable to the case of an ordinary debt of a man or of a widow or spinster; the form of judgment in such cases is simply that it is adjudged the plaintiff recover against the defendant £*x* (that is, the amount of the debt) and costs; but in the case of a married woman for an ordinary contractual debt incurred during coverture the judgment is not of such a simple character. It runs—

> It is adjudged that the plaintiff recover against the defendant £*x* (the amount of the debt) and costs, such sum and costs to be payable out of the separate property of the said defendant which she is now or may hereafter be possessed of or entitled to and any property which she may hereafter while discovert be possessed of or entitled to and not otherwise Provided that, unless otherwise ordered, nothing herein contained shall render available to satisfy this judgment any separate property, which at the time of entering into the contract sued on in this action or thereafter she was or may be restrained from anticipating, unless by reason of s. 19 of the M. W. P. Act, 1882, such property shall be available to satisfy this judgment notwithstanding such restriction.

To deal first with the concluding words of that form of judgment, that is as to property which by s. 19 of the Act is available to satisfy the judgment, notwithstanding the restraint on anticipation; this applies to judgments in respect of ante-nuptial debts and (in effect) fraudulent settlements, and so does not materially affect the case of the ordinary debt of a married woman contracted during coverture.

The form of judgment is substantially the form which was laid down as appropriate to the case of a married woman in *Scott* v. *Morley* (1887), 20 Q.B.D. 120—a case decided by the Court of Appeal forty-four years ago; the use of the form is imperative in all cases of debts contracted by a married woman during coverture: *Oxley* v. *Link* [1914] 2 K.B. 734, C.A., notwithstanding the lapse of time since the M. W. P. Act, 1882 was passed and the altered conditions in the status of a married woman in the mid-Victorian era and of a married woman at the present time.

It is the object of this paper to examine that form of judgment and its effect as regards the recovery of the debt sued for.

The form of judgment and the decision in *Scott* v. *Morley* were founded on the M. W. P. Act, 1882, so that instead of going back forty-four years we have to go back very nearly fifty years.

In that case judgment had been entered against a married woman and an order had been made committing her to prison under the Debtors Act, 1869, but it was held that no such order could be made because, in the words of Lord Bowen, s. 1, sub-s (2), of the M. W. P. Act, 1882, did not create a personal liability; it was what he called a "proprietary liability," and, in the words of Lord Justice Fry in the same case, "the judgment against her is confined to a particular fund and does not create a personal liability."

It is, of course, not suggested that there are no cases in which personal judgment will not be granted nor in which an order for attachment will not be issued: see *In re Turnbull* [1900] 1 Ch. 180, in which the subject-matter was a sum of money belonging to the estate of an intestate of which a married woman was administratrix. Also for non-payment of rates a married woman may be committed to prison upon a warrant of justices under the Distress for Rates Act, 1849, the doctrine in *Scott* v. *Morley* not applying (*Re Allen* [1894] 2 Q.B. 924); also for ante-nuptial debts (*Robinson* v. *Lynes*, [1894] 2 Q.B. 577). In those cases the order was not restricted to her separate estate, but in the ordinary case of a contractual debt the form of judgment in *Scott* v. *Morley* must be adhered to and enforcement by way of committal under the Debtors Act is not available, see *Re Clara Walter* (1891), 7 T.R. 445, in which a personal judgment had been entered against a married woman and she had subsequently been arrested under the Debtors Act for non-compliance with an order for payment of costs, but on application to the Divisional Court a Writ of Habeas Corpus was issued and she was released and given her costs.

So much for the enforcement of the judgment by committal under the Debtors Act. It is definitely not available for the judgment creditor, notwithstanding that he may be able to prove that the married woman debtor had in fact the means to pay.

Now let us consider the effect of the form of judgment against a married woman as regards enforcement of payment by bankruptcy proceedings.

By the M. W. P. Act, 1882, s. 1, sub-s. (5), every married woman carrying on a trade separately from her husband is in respect of her separate property made subject to the bankruptcy laws in the same way as if she were a *feme sole*. And by the Bankruptcy Act, 1914, s. 125, sub-s. (1), every married woman who carries on a trade or business, whether separately from her husband or not, is so subject, and by sub-s. (2) of the same section, where a married woman carries on a trade or business, bankruptcy proceedings may be commenced against her by means of a bankruptcy notice "as though she were personally bound to pay the judgment debt."

With the exception therefore of married women traders, married women are not subject to the bankruptcy laws, and even in the case of married women traders a bankruptcy notice would not issue against them prior to the express enactment of the Bankruptcy Act, 1914, in this respect (see *Re Lynes, ex parte Lester & Co.* (1893), L.J.R. 372). In the words of Lord Esher in that case: "The judgment was against her separate estate. The notice requiring her to pay the debt personally."

Again, in the bankruptcy of a married woman trader a general power of appointment over property is not separate property within the meaning of the M. W. P. Act, 1882 (*Re Armstrong*, 17 Q.B.D. 521), whereas, as regards men and unmarried women, property subject to such a power is available for distribution amongst the creditors (see s. 38 of the Bankruptcy Act, 1914, re-enacting s. 44 of the Bankruptcy Act, 1883).

In the case therefore of the ordinary debt of a non-trading married woman, a judgment creditor is deprived not only of its enforcement under the Debtors Act, but also of its enforcement under the bankruptcy laws.

The report issued in April, 1908, of the Parliamentary committee appointed to inquire into the bankruptcy laws is of some interest in its reference to married women and their liabilities under the bankruptcy law; it is as a result of their recommendations that the Bankruptcy Act, 1914, was passed and extended bankruptcy jurisdiction to include married

women, whether trading separately from their husbands or not, and to make available the issue of a bankruptcy notice in respect of such women, and also, by s. 52 of the Act, to make available in the bankruptcy the whole or some part of income restrained from anticipation, but in connexion with the subject of this paper para. 118 of the report is of particular interest, it is as follows:—

> Some witnesses have also proposed that every married woman, whether trading or not, should be subject to the bankruptcy laws. But the adoption of such a suggestion would involve a very serious innovation in the principles on which our bankruptcy law is founded.

The evidence cited in the report as supporting the proposal includes that of chambers of commerce and trade protection societies.

There have, since April, 1908, and the present time, been many "very serious innovations." If prior to 1908 there was need for an extension of the law in this respect, that need now, in 1931, has been multiplied a thousandfold; it must be admitted that the status of married women now and twenty-three years ago is incomparable. If, in 1908, there were "some witnesses" who advocated this extension, there would to-day be convincing evidence from the retail traders of the community and from all those who are in touch with them, including among them members of the legal profession, that this extension of the bankruptcy laws is desirable.

The proposal referred to in the report has not been lost sight of by its advocates, and some information of the desire of the trading community to bring about the projected result will be referred to later.

To return to our subject, let us consider in what other respects the judgment creditor is able to enforce his judgment.

It will be remembered that the form of judgment laid down in *Scott* v. *Morley* expressly excludes as available to satisfy the judgment, property in respect of which the wife is restrained from anticipation.

The restraint on anticipation was originally an invention of the Courts of Equity which later received statutory confirmation (see the M. W. P. Act, 1882, s. 19). It was designed for the protection of the property of a married woman from the influence and control of her husband, but citing from "Halsbury's Laws of England," vol. 16, p. 360—

> At the present day the chief importance of the restraint on anticipation is in the protection it affords a married woman against her own debts and engagements and the consequences of her wrongful acts.

That paragraph is a pregnant one; it seems surprising that an invention of the law maintained to this day and which must prevail until there is statutory authority otherwise, should afford an insurmountable barrier to a judgment creditor obtaining satisfaction from a married woman for her just debts and engagements or for the consequences of her wrongful acts, but such it is and such it must remain until there is some statutory enactment otherwise. It is true that so far as married women traders are concerned, the court has been given power in bankruptcy, s. 52 of the Bankruptcy Act, 1914, to order that the whole or some part of the income of a married woman which is subject to a restraint against anticipation shall be available for her creditors, regard being had to the means of subsistence available for the woman and her children.

That provision to some extent deprives a married woman trader of the protection of a restraint on anticipation, but it applies to married women traders only and affords no help to the ordinary judgment creditor of a non-trading married woman, since she is not subject to the bankruptcy laws.

Dealing with yet a further means of enforcing judgment debts, namely, that by means of garnishee proceedings, a restraint on anticipation will, in the case of debts incurred since 1893, prevent the attachment of income which was subject to such a restraint at the date of the contract sued upon: see *Wood* v. *Lewis* [1914] 3 K.B. 73, a decision under the M. W. P. Act, 1893, s. 1, altering the law which had been laid down under the M. W. P. Act, 1882, in *Hood Barrs* v. *Heriot* [1896] A.C. 174, and confirming the decision in *Barnett* v. *Howard* [1900] 2 Q.B. 784. In *Wood* v. *Lewis*, income restrained from anticipation was held not to be available for attachment even though it had, as in that case, been actually paid by the trustees to the married woman. And this disability will apply in the case of a widow, see *Brown* v. *Dimbleby* [1904] 1 K.B. 28, where previous decisions were confirmed to the effect that separate property of a married woman, which was subject to a restraint against anticipation at the date of a contract made by her, cannot be rendered available to satisfy a judgment obtained against her upon the contract after the cessation of the coverture.

On the other hand, damages recovered by a married woman are her separate property and may be attached for the purpose of satisfying a judgment against her: *Holtby* v. *Hodgson* [1889] 24 Q.B.D. 103, C.A.

The remedy by attachment of debts is therefore available in respect of separate property not being or having been subject to a restraint against anticipation, and the judgment may be enforced by the appointment of a receiver of such separate estate: but enforcement by these means has been the subject of numerous decisions which would call for the careful consideration of a legal adviser of a judgment creditor seeking to recover by this means.

The legislature has introduced a slight consolation as regards costs in favour of successful defendants in actions or proceedings instituted by married women. In such a case s. 2 of the M. W. P. Act, 1893, empowers the court to order payment of the costs of the opposite party out of property which is subject to a restraint on anticipation, and it may enforce such payment by a receiver and sale. The Act, however, only applies to proceedings which initiate litigation, and this does not extend to appeals: *Hood Barrs* v. *Heriot* [1897] A.C. 177; on the other hand, costs incurred in successfully opposing a counter-claim raised by a married woman are within the section: *Hood Barrs* v. *Cathcart* [1895] 1 Q.B. 873.

Summarising the situation, the normal position is that separate estate subject to restraint is not liable to satisfy any obligation of a married woman, except the liability for costs under s. 2 of the M. W. P. Act, 1893.

Of ordinary practical means of enforcement of judgments there remains available for the judgment creditor only execution by writ of *fieri facias*, which, in the case of a married woman, is in the same form as the judgment, that is to say, it is directed against her separate property not the subject of restraint from anticipation. Such separate property of a married woman available for execution is not infrequently conspicuous by its absence, though there may be her jewellery and clothing; any furniture in a house in which she is cohabiting with her husband will probably be claimed by him. As regards women living separate from their husbands, they more frequently than not live in furnished rooms or hotels. Even in the case of clothing an attempt was made by a husband in the case of *Masson Templier & Co.* v. *de Fries* [1909] 2 K.B. 231, to claim his wife's wearing apparel, purchased with money supplied by the husband for the purpose (sometimes, but not strictly accurately, referred to as "the wife's paraphernalia"), but after decisions in favour of the husband in the county court and the Divisional Court, the Court of Appeal decided that the husband could not claim such clothing against an execution creditor of the wife.

An order can, of course, be obtained for the oral examination of a married woman judgment debtor, but this is merely a means to an end.

To summarise the remedies of the judgment creditor of a married woman in respect of an ordinary debt contracted during coverture, first, the remedy under the Debtors Act is not available at all, even though she may have the means to pay; secondly, the remedy under the Bankruptcy Acts is available only in respect of married women traders and in their case subject to certain limitations; thirdly, the remedy by way of garnishee or the appointment of a receiver is rarely available and frequently hazardous; and, fourthly, the remedy by *fi. fa.* in actual practice is more often than not found to be unfruitful.

This immunity of married women debtors has involved frequent and serious loss to the retail trading community of this country, as a result of which an important traders' association in London has been endeavouring to bring about a change in legislation by making the bankruptcy laws extend to all married women, whether traders or not, as was suggested to the Parliamentary Committee whose recommendations led to the 1914 Act and referred to in their report, which has already been mentioned.

The alteration would be by way of amendment of the Bankruptcy Act, 1914, and would involve only the deletion from s. 125, sub-s. (1), of that Act of the words "who carries on a trade or business, whether separately from her husband or not," leaving the section to read—

> Every married woman shall be subject to the bankruptcy laws as if she were a *feme sole*,

and to alter sub-s. (2) of the same section so as to make the section read—

> Where a final judgment or order for any amount has been obtained against a married woman, whether or not expressed to be payable out of her separate property . . .

and so on to the effect that a bankruptcy notice may be available against her.

Such an extension of the bankruptcy laws would go far towards remedying the hardships which traders are experiencing; it would still leave a married woman exempt from commitment to prison for debt and would still preserve her

protection by way of restraint from anticipation, subject, however, to the provisions of s. 52 of the Act of 1914, by which the court is empowered to order that her property subject to restraint shall be available for her creditors, regard being had to the means of subsistence of the woman and her children.

It is suggested that it is illogical, in view of the status of married women at the present day, that they should be immune from bankruptcy proceedings.

RESOLUTION MOVED.

"That in the opinion of this meeting it is desirable that the bankruptcy laws should be made applicable to all married women, and that the Council of The Law Society be requested to take the subject into their consideration accordingly."

Mr. E. MELIAR SMITH seconded the motion; the reform, he said, was long overdue.

Mr. E. A. BELL (London) objected that the unfortunate wife should be subject to the bankruptcy laws, with all their vigorous procedure, just because some insidious tradesmen chose to trust her without the consent of her husband. The honourable status of a married woman should not be interfered with by impertinent inquiries in the bankruptcy court.

Mr. EDWARD A. BELL (London) read the following paper:—

ROGUES AND VAGABONDS.

Vagrancy, since the eviction of Adam and Eve, has been, by divine command, a state common to all mankind. The colourful careers of drifting humanity have provided mundane merriment from those primeval days, even until the recent journeyings of a Chauvinistic vagabond who, after admitting that they might regard him as a paradoxical liar, consoled his comrade hosts by informing them that the Anglo-Saxon race was not intelligent, though its members could not realise they were imbeciles. Such is the Shawtopian opinion now being generated by forced draught in Moscow.

A more philosophic vagabond achieved a kinder and a wiser outlook—

> "For just experience tells, in every soil,
> That those that think must govern those that toil;
> And all that Freedom's highest aims can reach,
> Is but to lay proportioned loads on each."

CONSPECTUS.

It may not be in vain, *in limine*, to generalise of roguery and vagabondism. There are rogues in rags and rogues in ruffles—and in the earliest enactments rogues and vagabonds were defined as persons who live idly and yet fare well, are well apparelled having nothing whereon to live, who spend money in ale-houses and places of bad repute or in any other improper manner, and do not apply a proper proportion of the money they earn towards the support of their wives and families; and some who use words of contempt contrary to good manners.

One can appreciate the status of vagabonds in the time of Elizabeth, if one refer to "A Caveat" or "Warning for Common Cursetors, Vulgarly called Vagabonds." The author indulges in the customary robustious Elizabethan; he complains of the "Execrable Wandering of Lousey Leuterers who indulge in Boozing and Bellychere." He goes on to inveigh, with much emphasis, against "Double Uplayers," chiefly of Welsh extraction, who gaped but never spoke, pretending to be workers for charity, and refers equally unkindlily to the other sex as "Glimmering Glauncers."

PROSPECTUS.

In a forensic disquisition it is incumbent to consider rogues and vagabonds statutorily. Henry VIII having impoverished monastic charity, stocks became the fashionable pastime of idle and suspected persons, wherein the law enjoined they should be set three days and nights, having none other sustenance than bread and water; and further every beggar not able to work should resort to the place where he last dwelt, was best known, or was born. This Statute was the nebulous incipience of poor law settlement, a fascinating legal study, with much concomitant gain to some of us. How many local authorities have denied a settlement to their paupers, who have had ultimately to be taken to the House of Lords and settled there!

When monastic charities were extinguished "a remedial" Act of Parliament empowered justices to grant licences under seal to poor aged and impotent persons not being whole and mighty in body, to beg within certain superficial limits, where within forty days they acquired a settlement. The Scots managed this better. To this day they allow no bedesman or poor person to claim a settlement unless he have resided three years in Scotland. This is understandable owing to scarcity of "visible means," as a stowaway at a northern port found to his cost when he besought a spare copper. "D'ye ken whaur ye are, mon?" came the answer, "This is Aberdeen." Possibly that is the reason why, according to the census returns, most Scotsmen have settled south of the Roman Wall.

Nor do American townships ever refer to the pauper in any official document as an "inhabitant"; if they do, he becomes "on expense" in the township.

"JOY QUIZZING."

Certain forensic vagabonds recently "wandered abroad" to New York. They gave a good account of themselves and were permitted to depart—possibly the resultant effect of the eighteenth amendment. One vagabond who escaped Ellis Island; with the view of studying the effect of the "Amendment," sought advice, and was told that, prohibition would be a very bad thing if one could not get a drink. Energised by this authoritative opinion, the vagabond, meeting one of his fellows, dutifully passed on the information. The latter, being saturated in dry circumambulation, replied that he had come to study the manners and customs of the American constitution and not to abuse its hospitality.

Now these two vagrants happened to sleep for a few hours each night on the same level in a certain hotel. The unrepentant joy quizzer, after:—

> Whirling through streets and parks with madness in each eye,
> Bewildered with the many sights that he was passing by,

was adorning for more prohibitive education. That very night a swivel-eyed citizen introduced himself as a retired wine merchant. The half-dressed vagabond recollected the high-tensioned conscience of his fellow, and re-directed the replenisher. By the aid of a shaving-mirror periscope, observation was kept on the alcohol-cooker, who was admitted apparently with first-class honours. They banqueted the same evening, hammering in: crab flake cocktail, stuffed celery, grilled bluefish, soused swordfish, squab-chicken, green corn on cob, alligator pear, nigger toes and ice.

It was observed that many (including the two vagabonds concerned) were served with their white rock in glasses conspicuously opaque.

The present very plastic Vagrancy Act of 1824 abolished begging, formerly the privilege of honest and needy vagabonds, fortified by a justice's licence. The present needs of our constitution may perhaps again require a revival. In fact an effort should be made to obtain its endorsement on our passports whenever we may venture to solicit internationally. Nowadays, in England, without such a licence, if indulged in more than once, we are in danger of whipping until the upper parts of our bodies become ensanguined. There was, however, until lately, this consolation, we could be provided with a testimonial of our whipping, together with a certificate of our original settlement, whither we must straightway wend. It was difficult with a bent and beaten back, because, if one can believe Dickens, we were—pardon the Hood-ish wink—all of a twist.

MUMMERS.

The vagabondisation of players and minstrels was probably occasioned by what happened when Leicester entertained Queen Elizabeth at Kenilworth. The star item in this festivity was the Squire Minstrel of Middlesex. He had been treated to "three lowlie coorsiez" and when called upon to play his part—

> "he cleered his vois with a hem and a reach, and spat out withal; wiped his lips with the hollo or his hand, and came forth with a sollem song."

Thereafter players and minstrels got the Parliamentary bird until the Vagrancy Act, 1824, from which they were, some say, omitted in error.

To this Act we are all now amenable. Certain of our fellow subjects (other than Scots, Irish and Channel Islanders, including Manxmen) are divided into three classes; idle and disorderly persons, embracing (in a statutory sense) beggars in public places and pedlars without a licence; and able-bodied persons refusing or neglecting to work and/or to support their dependents. Then the idle person evolved into a rogue and vagabond if he were convicted a second time, but the following amongst other practisers of iniquity were *per se* rogues and vagabonds: fortune tellers, wanderers abroad without visible means, open-air punters, gamesters and lottery mongers. Lastly, that legal superlative "The Incorrigible." It was only the other day that one of these ideal vagabonds, an Irishman, was arrested for wandering without visible means and causing an obstruction in the centre of a London thoroughfare. His sole possession was a piece of bread grasped in his hand. He explained to the magistrate that he was looking for the traffic jam.

METOPOSCOPY

Fortune tellers or persons pretending or professing to tell fortunes by subtle means, by palmistry or otherwise, have in times gone by assisted forensic gaiety.

A lady, whose Christian name was Georgina, told the court that she did not pretend or profess to tell fortunes—contrary to the statute. She however was unable to satisfy the court she had warned her client that though professing to tell fortunes by use of the ordinary means by which people used to tell fortunes, she had no belief therein, or that her consultant admitted he had no belief either. She was absolved by a small fine.

Another gentleman who was convicted of practising palmistry did not get off so lightly. He was imprisoned as a rogue and vagabond. It appears he indulged in conjuration by noises and raps on a tambourine. A gentleman entertained thereby, named Lodge, deposed that one of the manifestations was a slate concealed by the tambourine, on which was written the mystic sentence: "Oh! for a lodge in some vast wilderness."

The petition was heard, and the law prescribed a tarnished situation where even a worm would scrub.

Fortune telling in Kent seems to be hazardous. At Margate, this very year of hesitating grace, the bench with a £1 fine rewarded a lady of good intentions. For a silver consideration, she had very wisely told a tall young gentleman who requested enlightenment, that "if he were not careful when he was married, his wife would wrap him round her little finger."

Vagabond Attorneys.

In early days judges continually "admonisht" vagabond practicers in the law that they did not thereby introduce barbarism. *L'amour de la Justice dans les bons juges qui sont modérés n'est que l'amour de leur élevation.*

For sheer barbaric attorneydom one must go to America where they muscle it in bunches.

In the year 1902 an octogenarian Texan millionaire had occasion to consult a certain attorney with reference to Texan community law, which preserved his wife's right to half his testamentary estate. The attorney appears to have enlisted sympathetically the capricious husband's confidence, and he was let in to manage the Texas millions. In the course of the management he conspired with his client's valet, and it came out in evidence they mutually agreed that the client was living too long for their interests. Shortly thereafter, a paper cone, in which was a sponge saturated with chloroform, was used as a night-cap with the desired effect. It was arranged that the body should be immediately cremated, but owing to laches, an embalming process was decided upon. Shortly afterwards the valet and the attorney were jointly jailed. The valet was acquitted, becoming an approver and testifying he did not know whether the millionaire were alive or dead when he administered the chloroform. The attorney was convicted. He thereupon appealed to the Court of Appeals of the State of New York. The appeal was dismissed, but with strong dissent. One of the dissentient appeal judges stated that his opinion was based on Lord Erskine's maxim that all criminal trials should be "governed by principles founded in the charities of religion and in the philosophy of nature and in the truth of history and in the experience of common life." He did not intend to cast any reflection on anyone, but, in his opinion, the autopsy on the embalmed body was not through enough. Another dissentient judge, although disagreeing with his brothers' propositions, nevertheless was disposed to dissent from the affirmance of the verdict. The verdict of the jury being upheld, the attorney received a single ticket for Salt Creek, i.e., the electric chair, albeit this ticket was commuted to life imprisonment—but not for long. He was pardoned and left for another State, where he established himself in the practice of the law.

Thirty years elapsed and then American sentiment resurged. This year the whole case was reviewed by a committee appointed by the Supreme Court of the United States. As a result the attorney has been disbarred and is now a shyster hobo.

There is a moral to this story—by English law a husband who refuses to support his family is a rogue and a vagabond for life—but when he dies, though he completely disinherit his own flesh and blood, his vagabond conscience is canonised, and so the law—

"... being seasoned with a gracious voice,
Obscures the show of evil."

Gaming in Public Places.

Gaming has been called "an enchanting witchery begotten betwixt idleness and avarice," and it seems that the common law at first regarded the "playing at cards, dice, etc., when practised innocently and as a recreation the better to fit a man for business, not at all unlawful or punishable as any offence whatsoever." As education progressed, gaming became a business which had to be statutorily controlled. Thereupon there have been some illuminating decisions, which, to some extent, have diverted games (or pretended games) of chance into certain recognised channels. It has been solemnly held that dog races cannot be considered a pretended game of chance—the dogs are skilful. A half sovereign is not an instrument of gaming, although used for the purpose of betting.

No one can forget the oscillation of judicial definition over bookmakers' peripatetics. Tattersall's ring at Hurst Park was held to be a place within the Act, but Tattersall's ring at Kempton was not. The rival parties, in perfect amity, approached the House of Lords, and (notwithstanding the powerful dissenting judgments of two very learned law lords) it was finally decided that the consorting resorts of bookmakers at Kempton, Hurst Park or any other racecourse were not: "places used for betting with persons resorting thereto."

Lotteries.

Lotteries are regarded by some as a fair way to reach the pockets of misers and persons disposed to dissipate their funds.

In the reign of William III lotteries were proscribed as public nuisances. But during the Napoleonic wars Pitt was forced to explore every avenue for "Supplies," and from a perusal of the Finance Acts of this period, one becomes abundantly aware of the extent of Parliamentary reliance upon lotteries for replenishment of revenue.

To give one example. An Act was passed in 1795 for granting to His Majesty a certain sum of money to be raised by lottery. £758,541 13s. 4d. was raised by the sale of sixty thousand tickets of £13 15s. 10d. each. The total value of the prizes amounted to £500,000. The proportion of prize money to subscriptions was generous; our cautious grandfathers requiring much coaxing. Nevertheless, in the year 1808 a spasm of reaction precipitated itself into a Select Committee. The Lottery Act of 1823, which still enheartens our existence, sanctioned the issue of a final State aiding Gamble for that year, and the Act, after an appointed date, proclaimed the repression of private lotteries and the sale of foreign lottery tickets. Every person thereafter transgressing became a rogue and vagabond. This Act is still extant and has been latterly much resorted to with the view of checking Dublin-drifting thrift. It is especially observable in nearly every Lottery Act that sanction was given to open offices to receive deposits in England and Ireland. Scotland was wisely omitted, the statesmen of those days being well aware that a Scot does not part with his deposit before he grasps the prize.

It seems that the golf course is the only lottery where the Scotsmen continuously speculate, losing four balls and slicing and pulling until they find six. It is noticeable that these Scottish lottery mongers are silent from force of habit, never hazarding the question "Where's yours?"

There is Parliamentary exemption from lottery penalties. Englishmen are allowed by law to ballot for money prizes, but by legislative enactment these prizes are forthwith to be expended in purchasing works of art or science. The vertiginous eye-sores which have been scrapped from Victorian drawing-rooms, have in recent years stampeded this Act into desuetude.

Building societies are also legalised lotteries. Jessel, M.R., having intimated building societies were not lotteries, but loan ballots. This dictum was the building societies charter until vetoed by s. 12 of the Building Societies Act, 1894.

Raffled Husbands.

The law has, however, not yet sought to control certain theoretical and/or celestial lotteries. Misogynists describe marriage as a lottery. Did not Portia, a ward of court, complain to posterity?—

"... the lottery of my destiny
Bars me the right of voluntarily choosing;"

But by way of antidote to Burton's anatomy, an eighteenth century ballad monger prescribed "Pills to Purge Melancholy." One of his diverting remedies was:—

"The Maiden Lottery; containing 70,000 tickets at a Guinea each; the Prizes being Rich and Loving Husbands, from three thousand to one hundred a year ..."

Apparently eighty-six husbands whose total yearly income represented £78,000 a year were to be distributed by lottery. According to the rhyming prospectus our great-grandmothers were exhorted to take a chance by this enheartening refrain:—

"Then never be fearful to venture,
But girls bring your guineas away;
Come merrily in, for we shall begin,
To draw upon Valentine's Day."

Tempered Taxation.

A widening area of public opinion is rapidly germinating the idea of assisting this country's depleted revenues by the re-establishment of State lotteries; and indeed Government,

possibly with the view of exercising remunerative control, very recently legalised a mechanised incorrigible rogue and vagabond which has teetotalised the bookmaker. When :—

" Pale-faced . . . prophets whisper fearful change
Rich men look sad, and ruffians dance and leap,
The one, in fear to lose what they enjoy ;
The other, to enjoy by rage and war."

a hovering moment of suspense ruffles the face of public affairs. Search should be made for agreeable methods of taxation without tears. Lottery has a debasing sound, we must temporise. If Parliament were moved to pass a State-Aid Sortition Act respectable persons unblushingly could purchase sortickets from the local postmistress, and,

" glide, in modest innocence, away."

As a precaution against over buying, a warning should be endorsed on the ticket that the purchase of more than one ticket in a lottery is unscientific, " there being no more certain proposition in mathematics than that the more tickets one adventures upon, the more likely one is to be a loser."

Unemployment.

In the year 1900 a very strong Court of Appeal decided that strikers were not a class of persons entitled to poor relief within the Statute 43 Eliz. 2, and, therefore, if being able-bodied and capable, they refused to work, they ought to be convicted as idle and disorderly persons with concomitant consequences. On repetition of the offence they became rogues and vagabonds. The court, however, softened the consequences of its decision by intimating that if a recalcitrant striker became so weak through loss of food that he could not work he was to receive wholesome bread and water in such quantity as would enable him to keep body and soul together. Further, their wives and families during the husband's days of abstinence were to be *en fête* with dole of cash or kind.

Although we be " bit by bit " reformers, everyone must agree that our civilisation would be unworthy of its name if starvation were to be the fate of any of our workless fellow subjects.

Sportulam Furinculus Captat.

One may possibly gather comfort by historical retrospect.

We learn that the beggars in the heroic Homeric days were regarded as Olympic guests. Open house was kept for them. Their badge was a scrip and a wallet. Did not Athene give Odysseus ?—

. . . . σκῆπτρον καὶ ἀεικέα πήρην Ἠνκνὰ ῥωγαλέην *—

May we skip a millennium and come to the days of Imperial Rome. Every patron had his clients who fed at his table. First the crumbs, and then a good square meal, was gathered into the little basket or " sportula." By inevitable gradualness the State became the purveyor and provided the needy with a measure of corn for subsistence. But as so quickly happens, a privilege becomes a right, and the sportula came to mean " the dole " in its modern sense.

An immortal satirist foretold : Posterity will, full sail ahead, imitate the methods of the Roman civilised world.

" Nil erit ulterius quod nostris moribus addat."
" Posteritas, . . . utere velis."

So long as Rome was mistress of the world her immense resources enabled her citizens to be supported at the expense of the State whose coffers were almost unlimited. The sportula was truly the symptomatic germ which reacted upon an uneducated, irresponsible democracy, craving for pleasure and forgetfulness—taking all, giving nothing—and led to such a weakening of the central administration, as made its final collapse inevitable.

The Unemployment Act, 1930, no doubt, will be sub-edited, let us hope, with sounder fiscal precision. Subsequent legislation may require that every citizen of this country, who is not unfit by reason of sickness, and is capable of and available for work, should be employed primarily with, or, if necessary, without, his consent. The Italian Government seems to have recognised this principle, having enrolled 350,000 workless into an industrial army, the harbinger of the new Port of Rome !

The present system is menacing in that a large proportion of the younger generation is growing up in ignorance of the dignity and honour of work, being perforce content to subsist in wasteful and demoralising idleness.

The war having convulsed pre-conceived economic theories, we are now statutorily forbidden to fondle our ingots, and we must therefore review our estimation of wealth. Wealth is eugenic ability. In fact a system of life may be approaching when labour will be regarded not so much as dividend producing machinery, but as co-operative reconstructive capital, which in time may achieve parity by an international Zollverein, and then agio shall " effuse its opiate fumes in vain."

* A staff and a mean tattered scrip.

Flickering Finance.

In these days of systaltic currency high authority enjoins us to be wisely thrifty, lest the buffets of fate knock us " cents-less." Indeed, many of us are seriously complaining that there is no such increase of bus fares, as would enable us to save money by walking, and in Scotland, where thrift is indigenous, fathers of young families have already arranged to tell the tale at Christmas : Poor Santa Claus' aeroplane has crashed !

Thrift varies with longitude. In Germany the old economic doctrines have faded away. Two Teutons had inherited, equally, their father's fortune. The one defined thrift as laying up his patrimony in Government securities ; the other accepting Solomon's advice, ate, drank and was merry. He absorbed many a hundred dozen. The 1923 money crash supervened and the rentier became a pauper. The other, owing to a bottle famine, waxed fat upon his " empties."

Moral : " A bottle nose can become a Phœnix."

Etioliation.

There are still a number of unrepealed Acts of Parliament either superfluous or not in use ; some passed more than 300 years ago.

The general form of life having changed, some are inclined to the opinion there should be a Statute of Limitation running against these ancient Acts of Parliament, and that the drafting of future Acts should be confined to the codification of principles, replacing the present unco-ordinated series of provisos and exceptions.

However, tentative submission of paratactic suggestion is a dangerous pastime.

Let us quieten any conscientious objections by reflecting on the worse state of a married musical motoring rogue and vagabond who, being in need, had gathered alms to music. Being required to appear before a court of very summary jurisdiction he pleaded " he was trying to get an honest living." He was fined ten shillings, the apologetic chairman explaining " We don't do this sort of thing here." Therefore one is constrained to the opinion that dehortations of this colourable calibre must be ephemeral. The utmost one can reasonably hope or fear is to fill a vacant half-hour with prattle, and be forgetfully forgiven :—

" Confiteor ! si quit prodest dilecta fateri."*

Mr. Charles L. Nordon, LL.B. (London), read the following paper :—

Solicitors' Accounts.

The object, with which this paper is contributed, is to examine, before a critical and instructed audience, the principles underlying those clauses, of the two Bills now before Parliament, which are designed to insure the segregation of clients' moneys passing through solicitors' accounts. It is also my endeavour to ascertain, with your assistance, how best we can achieve, in clear and economical fashion, a system which will simplify and standardise, so far as possible, the work of the accounts department of our offices.

Whilst The Law Society have always laid down as an essential principle of professional ethics that a solicitor must earmark and keep intact and readily traceable the disposition of his clients' moneys, they have not, so far as I am aware, prescribed for our guidance any *specific system* of keeping our accounts which will accomplish the absolute segregation of our clients' moneys. Probably they have thought that, within the foregoing ethical limitations, it could safely be left to each solicitor to devise his own particular system. This freedom may perhaps have contributed to that occasional laxity which it is now desired to cure by legislation. But in considering such legislation we must enquire whether the methods proposed will be completely effective to achieve the results at which our legislators are aiming. It is obviously useless to lull the public into a false sense of security by the inculcation of the belief that a completely " fool-proof " system has been established by the touch of the parliamentary draftsman's pen.

The proposed legislation proceeds on the reasonable assumption that most cases of maladministration which occur are not the result of deliberate dishonesty, but of confused accounts rendering it impossible or difficult for the solicitor in default to know how much of the money under his control is his own and how much is his clients'. By one of the pending Bills it is sought to prevent this confusion by requiring the solicitor to pay all sums received on account of clients into a banking account which is to be entitled " clients' accounts " (but on which only the solicitor himself can draw).

We have most of us been brought up to the system of the separate banking account for clients' moneys, and for twenty years or more I, myself, followed that method. But a little critical examination and the consideration of some

* " One confesses if admission of shortcomings can avail."

recent cases will show that even the separate banking account will not prevent the lax or careless (though otherwise honest) practitioner from drawing on one client's money in the "omnibus" clients' account for the benefit of another client. That protection could only be achieved by the solicitor opening a separate banking account for each client, which, of course, is a "*reductio ad absurdum*."

From these considerations, and also with a view to increased efficiency, I have been led to adopt, as the result of many years' practice and experience, a system which, for all I know, may possibly have been arrived at independently by other practitioners, but which, as I have never yet heard it expounded, and as it may possibly be of service to some of our members, I will endeavour briefly to enunciate. I claim that its adoption will ensure that wherever a solicitor draws a cheque he will know how much money he has at his own free disposal and how much at the disposal of each client.

This system starts with the essential and fundamental principle that every sum of money received or paid must be labelled "*ab initio*" in the bank paying-in book and in the cheque book or petty cash book respectively under the four following headings:—

(1) *Name of account*.....
(2) *Subject-matter*.....
(3) *From whom received*.....
or
To whom paid.....
(4) *For what purpose received*.....
or
For what purpose paid.....

This essential preliminary determination by the partner or managing clerk at the time of each receipt or payment is, of course, automatically carried through the bank cash book and ledger. But a further point of preliminary discrimination is still essential, namely, whether each amount received is on behalf of a client and whether each amount paid is out of the money of a particular client actually in hand. This distinction is marked by ascribing the letter "C" for receipts on clients' behalf or payments out of clients' moneys, and the letter "P" (professional) for all other receipts and payments. Obviously the letter "P" can only be ascribed when the receipts belong exclusively to the solicitor or when payments are made otherwise than by the specific allocation of the money of a particular client.

This preliminary allocation having been made at the actual moment of receipt or payment (when, of course, the actual facts are freshly in mind), the resulting entries in the bank cash book will show the precise details in analytical form.

I have set out in an appendix to this paper the rulings which I adopt for the receipts and payments column of my firm's bank cash book. From these it will be seen that "P" account and "C" account receipts and payments are analysed into separate totalled columns.

A further essential in this system is that *all* receipts which include clients' moneys (even although a substantial part may be costs or refund of disbursements) must be posted to the "C" account column; nothing must go into the "P" account column which is not exclusively remuneration or refund of disbursements previously made from "P" account. Similarly, advance receipts on account of costs (before the work has been done), or for stamp duties, counsel's fees or other substantial prospective disbursements, must go into "C" account until they can be drawn against for the purposes for which they have been received in advance.

In this system the bank cash book can be balanced at any moment and it can readily be seen how much money is held on clients' account and how much on professional account.

For the segregation, however, of each particular client's credit balances from those of other clients, as well as for the periodical transfers to professional account of the sums to which the solicitor has become entitled, a simple supplementary book is required, known as the "running balances book." This book is divided into three sections:—

(*a*) Clients' credit balances.
(*b*) Running quarterly transfer accounts.
(*c*) Weekly bank balances.

In the "clients' credit balance" section, each client's name is entered, with the amount in hand remaining unappropriated. As moneys are paid away for each client's account the running credit balance is correspondingly reduced. The clients' running balances are totalled each week, and that total must never exceed the balance in the "C" account column of the bank cash book. In practice, however, the total of the clients' running balance is always smaller than the available credit balance of the "C" account column of the bank cash book, inasmuch as costs will be included in many of the items entered as receipts in the "C" account column, pending the quarterly transfer.

At the end of each quarter a transfer account is prepared and audited showing what bills have been settled and agreed or costs included in moneys received on "C" account, and these items, entered to the clients' debits in the ledger, are totalled. The total is then transferred from the "C" account column to the "P" account. The transfer section of the "Running balances book" deals with these quarterly transfers made from "C" to "P" account. This, also, during the quarter, is kept on a "running" basis, so that when a lump sum received includes partly clients' money and partly costs and disbursements, the latter are entered in the running transfer, though the actual transfer is not made in the cash book until after the quarterly totalling and audit. Similarly, when a bill is delivered and agreed by the client against moneys in hand, the amount thereof is entered in the running transfer account, so that if at any time it is of interest to the solicitor to know how much is accruing for transfer at the end of the quarter, he can easily ascertain that information and, if so justified, make an interim transfer.

The third section of the "Running balances book" is designed to show the weekly balances when the bank cash book is checked against the bank pass book, as it should be at the end of each week. These balances are entered weekly and show how much is in the bank on "P" account and "C" account respectively. The solicitor can thus at a glance reconcile the weekly balances with the balances in the bank pass book.

If the principal or the cashier is in doubt whether any particular money can be paid out of a client's account, he has only to turn to the client's running balance in section "A," bringing it up to date, if necessary, with subsequent debits in the ledger. If the particular client on whose account a payment is required to be made is not in credit, then the proposed payment must be entered in the "P" account column so as to ensure that one client's moneys are not used to finance another. With this system a ready check is available to ensure that the total of payments on "P" account does not exceed the available balance in those columns, and it is impossible for the solicitor unknowingly to utilise clients' moneys for the solicitor's own purposes or for the purposes of a client other than the one for whose account the particular money proposed to be paid has been received.

This system, which in practical experience works simply and efficiently, represents considerable advantages over the system of having two or more separate accounts at the bank with separate pass books to be checked weekly against the bank cash books for each account. If that method is adopted it is much more difficult and expensive in labour to keep the cash position before the solicitor weekly and to enable him to strike weekly balances, and, after all, the device of separate bank accounts is simply an amateurish attempt to require the bank to do the book-keeping which it is the solicitor's duty to carry out, and the supposed safeguards are more apparent than real.

If I might be allowed to venture a criticism on the two Bills before Parliament, I would, with all due deference, suggest that Sir John Withers' Bill is unworkable and, in many important respects, illusory, whilst the Bill promoted by The Law Society does not go quite far enough. Once conceded that legislation on this subject is desirable, then all that it seems necessary to have enacted is that every practising solicitor must keep his accounts in such a manner and under such control that it may, at any time, be ascertained therefrom how much money belonging to each client he has in hand and how he has disposed of the moneys of each client entrusted to him. It might, however, also be made compulsory to require a solicitor on each application for the renewal of his practising certificate to make a statutory declaration that his accounts are kept in the foregoing manner. The annual making of such a declaration would bring home to each solicitor the necessity for complying with this obligation. He could also be required to state whether his accounts are subject to professional audit and, if so, the name of his auditors. The Law Society might take power to require that on complaint made to them with regard to any solicitor whose accounts are not declared to be professionally audited, the Society should be entitled to send an accountant to make such audit or investigation as the Council should think fit. The very existence of such a power, known to the practising solicitor, would probably, in practice, render its exercise unnecessary except in isolated cases.

Clause 1, sub-cl. (3), of Sir John Withers' Bill, which provides that no money shall be paid into the client's bank account prescribed by sub-cl. (1) except money received on a client's account and any minimum balance required by the bank, presents a difficulty "*in limine*." For what is the solicitor to do with, say, a cheque for £600, of which £550 represents a debt and £50 costs? Under sub-cl. (1) he must pay the £600 into the client's account, but under sub-cl. (3) (*b*) he must

not, for £50 of it is his own money. The same observation, of course, applies to a cheque which includes not only purchase money but also scale costs and stamp duties, and other similar exemplifying difficulties will readily present themselves to my audience.

It is also pointed out that the provision of cl. 1, sub-cl. (2), of Sir John Withers' Bill, that the solicitor is to notify the bank that his client's account is in fact a "client's account" is an illusory protection from the client's point of view, for the bank must honour every cheque drawn on that account whilst in funds and can in practice ignore such a notification, except perhaps for the limited purpose proposed by cl. 5 of the Bill which would only be a safeguard in quite exceptional cases.

The real essential for the practising solicitor, not only from the point of view of adequate protection for his client (which is almost invariably uppermost in his mind), but also from his own personal point of view, is that he should adopt a simplified system which will enable him to assess his financial situation at any moment and will periodically bring to his notice all sums of money which he may have in hand belonging to his client and which it is his duty to dispose of as quickly as he can. For, be it observed, all this internal book-keeping and the risks and responsibility entailed are undertaken without any charge to the client.

It is to be hoped that in view of the publicity given to this subject any legislation particularly directed to our profession will be followed by similar legislation dealing with other custodians of public money. The losses suffered by the public from the few cases of solicitors' defalcations must be infinitesimal compared with those resulting from misappropriations by those practising other professions or businesses. I, myself, in many years of professional experience, have never encountered a case of defalcation by a solicitor. Those cases which do occur receive undue prominence from the meritorious determination of our Law Society to promote the very highest standard of professional integrity and to expel from membership those who are not minded to act on the principles which they lay down. But is there any logical reason why, for example, the stockbroker, the accountant or the estate agent should not be compelled to observe a similar standard with regard to *their* accounts, so that the public may feel that when they entrust money for a specific purpose it shall and can, so far as principles of honesty can be enforced, be applied only for that specific purpose.

And dare we even be allowed to hope that with the "inevitability of gradualness" which is inherent in the conservative nature of our legislators, we may, in course of time, find those examples followed by regulations controlling those other custodians of public money, namely, the directors of joint stock companies, so that eventually the investor, like the client, may have complete legislative security that money which he entrusts for one purpose shall not be misapplied to another.

APPENDIX.

Specimen Ruling of the Receipts and Payments Sides respectively of the Bank Cash Book (indicating the "P" (Professional) Account and "C" (Clients) Account Columns).

RECEIPTS SIDE.

Date.	Client.	Matter.	P. or C.	For what received.	L. Fo.	Amount	P. A/c.	C. A/c.

PAYMENTS SIDE.

Date.	Client.	Matter.	P. or C.	For what paid.	L. Fo.	Amount	P. A/c.	C. A/c.

Mr. G. W. DAWKINS (Birmingham) condemned the system as cumbersome. Every solicitor would, he said, keep an account of all his clients' money in a ledger, and if this were posted up regularly and punctually, reference to the account of any client would show at once whether there was sufficient money in hand to make a payment out from it. There should, therefore, be no risk of paying one client's money out on behalf of another. If all moneys received, other than those solely consisting of costs, were all paid into the client's account, there would be no danger of money getting into the wrong account.

Mr. REGINALD ARMSTRONG (Leeds) held that the dishonest man was not going to be made honest by book-keeping. If a man kept all his receipts on one side of the cash book and all expenses on the other, and ledgered payments to his client's account daily, and, in addition, ledgered his receipts for costs on the one side of his own ledger account and on the other side his office expenses, the balance of the account must be his own money. In bigger offices that balance might be analysed, probably on the cash book, but the system could be worked with equal ease in a single column cash book, if the ledger were posted every day. The questions which arise concerning the money of clients practically all affected solicitors whose book-keeping would not take them a quarter of an hour a day.

Mr. G. E. HUGHES (Cheltenham) expressed the hope that The Law Society would take power at an early date to send an accountant to make the necessary investigations in a case where complaint had been received. Recent defalcations, particularly in one part of the country, had shown a notable deficiency in present methods. Sir John Withers' Bill was quite unworkable as it stood; it faced the solicitor with split cheques, to which banks very strongly objected.

Mr. NORDON, replying, pointed out that, whereas his system involved running over each week twenty or thirty pages in the summaries, the same facts would have to be ascertained from possibly a thousand pages of the ledger. It was the requirements of the big firm that had to be borne in mind. He emphasised that the responsibility for keeping accounts lay on the solicitor, and that it was far better for him to devise a system which he understood than to leave the accountant to devise a scientifically perfect system which he could not understand. (Hear, hear.)

Societies.

The Law Society's Cricket Club.

The second annual dinner of the Club was held at the Trocadero Restaurant, on Wednesday, 28th October, the President of the Club, Mr. G. R. Y. Radcliffe, presiding. The guests included Mr. T. H. Bischoff, Mr. H. R. Blaker, Mr. D. T. Garrett, and Mr. A. C. Morgan.

Mr. Garrett, in proposing the toast of the Club, said that such clubs were the custodians of cricket, which he regarded as a bulwark of all that was sound and healthy and friendly in national life.

Mr. Macilwraith, the Hon. Treasurer of the Club, in responding to the toast, referred to the financial assistance which had been received in the past from The Law Society, and to the indebtedness of the Club to Lord Riddell for the further use of the *News of the World* Cricket Ground at Mitcham. He felt that the Club would go ahead if only they could obtain a ground of their own.

In the absence of the donor, the President then presented to Mr. J. P. Halpin the cup given by Mr. George Gordon for the best all-round playing member for the season.

The Chairman, in proposing the toast of the visitors, said how honoured the Club felt at having four members of the Council of The Law Society present. He felt very strongly that the Rugby and Cricket Clubs were wonderful achievements, but that it was a reproach that they should have no ground of their own. If a lead was given from headquarters to an appeal for funds, he felt that they would get good support from solicitors in London.

Mr. Morgan, in responding to the toast, supported the appeal for the purchase of a ground, and said that they would not lack friends on the Council. Mr. Bischoff also replied.

Mr. Louis D. Gordon, the Hon. Secretary of the Club, announced that he had been able to arrange fixtures for next season with the University Colleges played this year and some others, and that for the first time a match had been arranged with the M.C.C.

The evening terminated with a musical programme.

Law Students' Debating Society.

At a meeting of the Society, held at The Law Society's Hall, on Tuesday, 27th October (Chairman, Mr. C. F. S. Spurrell), the subject for debate was "That the case of *Holmes* v. *Payne* [1930] 2 K.B. 301 was wrongly decided." Miss G. Peterson opened in the affirmative; Mr. J. C. Christian Edwards opened in the negative. Miss J. O'Connor seconded in the affirmative; Miss E. Cameron seconded in the negative.

The following members also spoke: Messrs. A. L. Ungoed-Thomas, H. J. Baxter, W. M. Pleadwell, I. T. Smith, and A. C. Dowding. The opener having replied, and the Chairman having summed up, the motion was lost by eight votes. There were twenty-three members and two visitors present.

London University: King's College.

THE FUNDAMENTAL PRINCIPLES OF THE PRESENT LAW OF OWNERSHIP OF LAND.

Lord Justice Lawrence took the chair at King's College on 21st October, on the occasion of an advanced lecture in laws on this subject. The lecture was read by Mr. J. M. Lightwood; its author, Mr. T. Cyprian Williams, K.C., being unfortunately absent through illness.

Mr. Lightwood pointed out that, although theoretically a man could not exercise absolute ownership over land in this country, yet a tenant in fee simple enjoyed all the advantages of absolute ownership except the form. After a brief discussion of the natures of ownership and absolute ownership, he enlarged on the difference between absolute ownership and a tenure in fee simple. Absolute ownership, he said, was not a technical or even a precise term of English law, but Mr. Joshua Williams, in his classical work on the law of real property, had used it in the sense of a proprietary right which in the first place was not merely an assigned part of the ownership of some other person, and in the second place was interminable. In modern times goods and chattels were the object of a proprietary right of this kind. The fundamental principles of the English law of real property were that land was the object, not of absolute ownership, but of feudal tenure. Every parcel of land was held of some lord or other, and either mediately or immediately of the King. In the early days of feudal tenure, where a tenant died and no person was entitled to succeed as his heir, the land had escheated to the lord of the fee or his successors. Subinfeudation, with its multiplicity of mesne landlords, had been abolished by the statute of *Quia Emptores*, and the majority of mesne lordships had become extinct. It was not, however, accurate to say that, on the failure of heirs, a parcel of land escheated to the Crown. The true rule was that it fell in to the immediate lord of the fee. A number of mesne lordships had continued to exist at least down to the end of 1925, and the possibility of an escheat to such mesne lords had been established in several cases decided in the last century (e.g., *Viscount Downe* v. *Morris* (1844), 3 Hare 394; *Hughes* v. *Wells* (1852), 9 Hare 749, 775). A failure of heirs was not the only possible cause of escheat, which might take place whenever the tenant's estate in fee simple came to an end from any cause whatever. In *Re Mercer and Moore* (1879), 14 Ch. D. 287, a trustee in bankruptcy, under s. 23 of the Bankruptcy Act, 1869, had disclaimed a parcel of freehold land which was subject to a perpetual rent-charge and to certain restrictive covenants. This section provided that such property reverted to the person entitled on the determination of the estate or interest, but that, if no such person existed, the estate could not in any case remain in the bankrupt. Jessel, M.R., had considered that the fee escheated to the Crown, and had uttered another dictum to the same effect in *Ex parte Walton*, 17 Ch. D. 746. Mr. Cyprian Williams submitted that the land could escheat in the same circumstances to a mesne landlord.

ESCHEAT UNDER THE NEW PROPERTY LEGISLATION.

The legislation of 1925 had abolished neither the paramount seignory of the Crown nor the seignory of any mesne lord. The Law of Property Act, 1922, had extinguished many manorial incidents but not escheat, and had clearly contemplated the continued existence of all seignories over freehold land held in fee simple. Neither the Law of Property Act, 1925, nor the Administration of Estates Act of the same year, contained anything to deprive the Crown or any mesne lord of seignory. The latter statute had abolished escheat for want of heirs, but had not affected the other causes of escheat or destroyed escheat itself. The fundamental principles of the law of ownership of land had not, therefore, been changed by the legislation of 1925; land was still subject to feudal tenure; the king remained the lord paramount of all the land within the realm; every parcel of land was still held by some lord, and the greatest interest the subject could have in land was still an estate in fee simple and no more.

Moot at Law Society's Hall.

The annual joint moot of the University of London Law Society and The Law Society's School of Law was held at The Law Society's Hall on 22nd October. Lord Macmillan presided, and counsel were Mr. T. J. F. Hobley and Mr. G. Paletz (University of London Law Society) and Mr. Godfrey Roberts and Mr. G. W. Treadwell (Law Society's School of Law). There were about eighty present, including the President of The Law Society (Mr. P. H. Martineau), the Chairman of the Legal Education Committee of The Law Society (Mr. T. H. Bischoff), Sir Robert Welsford, Mr. F. A. Padmore, Mr. G. S. Pott (Members of the Council), Mr. A. J. Vere Bass, and members of the teaching staff of the School of Law. Mr. F. N. W. Lockyer (Law Society's School of Law, moot secretary) proposed, and Mr. Hobley seconded a vote of thanks to Lord Macmillan for presiding.

Legal Notes and News.

Honours and Appointments.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to approve the appointment of Mr. DAVID ALEXANDER DUNCAN as Assistant Clerk of the Bills and Sequestrations in the Court of Session, in place of Mr. Thomas Swinton Paterson, resigned.

The King has been pleased to approve of the retention of the title of "Honourable" by Lieut.-Colonel F. S. TATHAM, D.S.O., V.D., lately a Judge of the Natal Provincial Division of the Supreme Court of South Africa.

The Governor-General of India in Council has decided to appoint Mr. JAMES HARVEY MONROE, K.C., of the Bar of Northern Ireland, as an additional Judge in the High Court of Judicature at Lahore. Mr. Monroe was called to the Bar in 1909, and has had a considerable and varied practice. He is forty-seven years of age. He has already had some judicial experience as Judge of Native Courts in Egypt from 1920 to 1923. He took silk in 1920, and is a Bencher of the Inn of Court of Northern Ireland.

Mr. JOHN C. DAVISON, K.C.M.P. and Mr. John McWilliam, Barrister-at-Law, have been appointed Senior Crown Counsel and Junior Crown Counsel respectively for the Northern Ireland Winter Assizes.

By an Order of the Governor-General of Northern Ireland, the appointment of Mr. WILLIAM JOHNSON, Barrister-at-Law, as a Deputy Umpire for the purposes of the Unemployment Insurance Act, 1920, has been continued until the 31st March, 1932.

The Freedom of the Borough of Conway has been conferred upon Mr. JAMES PORTER, solicitor, of that town, after completing fifty years' service in the neighbourhood.

Mr. WILLIAM AUTON, of Northallerton, has been appointed Clerk to the Soke of Peterborough Guardians Committee.

The Freedom of the Borough of Morley has been conferred upon the town clerk, Mr. F. THACKRAY.

ALLEGED FRAUDULENT CONVERSION BY SOLICITOR.

John Humphreys Mockridge (aged 60), solicitor, of Doylegardens, Kensal Rise, appeared on remand at the Ealing Police Court recently. He had been allowed bail. He was charged with fraudulently converting to his own use £300, part of the estate of the late Caroline Elsey, of which he was trustee under the will. There was a further charge of conversion relating to £25 received on behalf of Mrs. Florence Howe. Mr. R. M. Howe prosecuted, and Mr. Jonas represented Mockridge.

Evidence was given of the alleged non-payment to the beneficiaries of six legacies of £50 making up the £300 in the first charge.

Mr. Tom Pollitt, Assistant Official Receiver in Bankruptcy, at present stationed at Birmingham, said that in 1930 he was attached to the Official Receiver's Department in the North London district, and he had charge of the bankruptcy of Mockridge. The receiving order was dated 16th June, 1930, and the date of adjudication of the bankruptcy was 14th July, 1930. Mockridge filed a statement of his affairs on 16th December, 1930. Among the unsecured creditors he showed £475, which was stated to be the balance of money received "Re Elsey (deceased)" and not paid over. In connexion with that entry he (Mr. Pollitt) received a statement from Mockridge with an account. That account, the witness continued, purported to show how the moneys received from the Elsey estate were dealt with, and purported to show that he had a balance in hand of £470 13s. 4d.

When asked if he had anything to say, Mockridge said "I am not guilty, and reserve my defence."

Mockridge was committed for trial at the Central Criminal Court on 17th November, bail being allowed, himself in £500 and one surety in a similar amount.

BURNLEY COUNTY COURT.

Retirement of Mr. Registrar Hartley.

Attention is drawn to a notable career of service by the retirement, which took effect on 30th September, of Mr. William Harry Hartley, Registrar for close upon fifty years of the Burnley County Court.

Mr. Hartley was admitted as a solicitor in 1873, and was appointed to the registrarship at Burnley in 1882 in succession to his father who had held the office since 1855.

On 24th September, at the last sittings of the court prior to Mr. Hartley's retirement, His Honour Judge Burgis, the tenth in succession of the judges under whom Mr. Hartley had served, took occasion to bid a ceremonial farewell to the retiring registrar in which he was joined and supported by the Mayor of Burnley, by representatives of the Bar, and by a very large body of the local solicitors.

Judge Burgis spoke of Mr. Hartley as one who had presided in that court before most of those who had practised there recently were born, and referred to the many changes in law and procedure which Mr. Hartley in the course of his half-century as registrar had seen, to all of which he had brought an adaptive, progressive and sympathetic mind. He himself was losing a valued colleague in the administration of justice, one who had brought to the discharge of his duties a judicial and impartial mind, a sound knowledge of the law, a keen insight into human nature, an unruffled temper and unfailing courtesy, qualities which had won the regard and goodwill of all who had practised before him. They were parting from a tried and trusted friend; they would miss his old-world dignity, his courtesy, his classic lucidity of speech; they would regret his loss, but they would remember with satisfaction that he laid down his office with his faculties unimpaired.

The Mayor (Alderman Nuttall) assured Mr. Hartley that he would carry with him into his retirement the gratitude and good wishes of the people of Burnley: and Mr. A. E. Jalland for the Bar, Mr. H. B. Creeke (President of the Burnley Law Society) for the solicitors, Mr. J. W. Carter (the Official Receiver), and Mr. H. Procter (the Borough Coroner) gave fitting expression to the high and universal esteem felt for Mr. Hartley by all who had come into professional contact with him.

In acknowledging the valedictions and good wishes tendered to him, Mr. Hartley spoke of the confidence and consideration he had enjoyed from a long line of eminent and painstaking judges, the sympathy and forbearance shown towards him by a host of advocates, and the loyal and efficient support of his clerical staff, attributing to a combination of favourable circumstances such as could not have fallen to the lot of many his ability to carry so long the burden of the office he was about to relinquish.

Mr. Hartley, who lost his two sons in the war, is succeeded in the registrarship by a son-in-law, Mr. P. M. C. Hayman, who is in practice (as a member of the firm of Pilgrim, Hayman and Badgery) at Colne.

Court Papers.

Supreme Court of Judicature.

Rota of Registrars in Attendance on

Date	Emergency Rota.	Appeal Court No. 1.	Group I. Mr. Justice Eve. Witness. Part I.	Mr. Justice Maugham. Non-Witness.
M'nd'y Nov. 2	Mr. Blaker	Mr. Andrews	Mr.*Blaker	Mr. Hicks Beach
Tuesday .. 3	More	Jones	Jones	Blaker
Wednesday 4	Hicks Beach	Ritchie	*Hicks Beach	Jones
Thursday . 5	Andrews	Blaker	Blaker	Hicks Beach
Friday .. 6	Jones	More	*Jones	Blaker
Saturday .. 7	Ritchie	Hicks Beach	Hicks Beach	Jones

Date	Group I. Mr. Justice Bennett. Witness. Part II.	Mr. Justice Clauson. Non-Witness.	Group II. Mr. Justice Luxmoore. Witness. Part II.	Mr. Justice Farwell. Witness. Part I.
M'nd'y Nov. 2	Mr.*Jones	Mr. Ritchie	Mr.*More	Mr. Andrews
Tuesday .. 3	*Hicks Beach	Andrews	*Ritchie	*More
Wednesday 4	*Blaker	More	*Andrews	Ritchie
Thursday . 5	Jones	Ritchie	More	*Andrews
Friday .. 6	Hicks Beach	Andrews	*Ritchie	More
Saturday .. 7	Blaker	More	Andrews	Ritchie

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (20th September, 1931) 6%. Next London Stock Exchange Settlement Thursday, 5th November, 1931.

	Middle Price 28 Oct. 1931.	Flat Interest Yield.	Approximate Yield with redemption
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	88	4 10 11	—
Consols 2½%	57	4 7 9	—
War Loan 5% 1929-47	98½xd	5 1 6	—
War Loan 4½% 1925-45	96xd	4 13 9	4 17 9
Funding 4% Loan 1960-90	89	4 9 11	4 10 9
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	94	4 5 1	4 6 9
Conversion 5% Loan 1944-64	102	4 18 0	4 17 6
Conversion 4½% Loan 1940-44	97	4 12 9	4 16 0
Conversion 3½% Loan 1961	78	4 9 9	—
Local Loans 3% Stock 1912 or after	64½	4 13 0	—
Bank Stock	251	4 15 7	—
India 4½% 1950-55	70½xd	6 7 8	—
India 3½%	52½	6 13 4	—
India 3%	44½	6 14 10	—
Sudan 4½% 1939-73	94½	4 15 3	4 16 0
Sudan 4% 1974	85½	4 13 7	4 16 0
Transvaal Government 3% 1923-53 (Guaranteed by Brit Govt Estimated life 15 yrs.)	80	3 15 0	4 9 0
Colonial Securities.			
Canada 3% 1938	86½	3 9 4	5 6 9
Cape of Good Hope 4% 1916-36	92½	4 6 6	5 15 0
Cape of Good Hope 3½% 1929-49	80½	4 6 11	5 3 8
Ceylon 5% 1960-70	96	5 4 2	5 4 6
Commonwealth of Australia 5% 1945-75	75	6 13 4	6 15 9
Gold Coast 4½% 1956	92	4 17 10	5 1 0
Jamaica 4½% 1941-71	91½	4 18 4	5 0 0
Natal 4% 1937	92½	4 6 6	4 15 0
New South Wales 4½% 1935-1945	63	7 2 10	8 0 6
New South Wales 5% 1945-65	68	7 7 1	7 11 3
New Zealand 4½% 1945	85½	5 5 3	6 2 6
New Zealand 5% 1946	92½	5 8 1	5 15 6
Nigeria 5% 1950-60	97½	5 2 7	5 3 6
Queensland 5% 1940-60	70	7 2 10	7 8 0
South Africa 5% 1945-75	98½	5 1 6	5 1 9
South Australia 5% 1945-75	70	7 2 10	7 8 0
Tasmania 5% 1945-75	67	7 9 3	7 12 6
Victoria 5% 1945-75	69	7 4 11	7 8 3
West Australia 5% 1945-75 (The prices of Stocks are in many cases nominal and dealings often a matter of negotiation.	70	7 2 10	7 6 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	63	4 14 6	—
Birmingham 5% 1946-56	100	5 0 0	5 0 0
Cardiff 5% 1945-65	100	5 0 0	5 0 0
Croydon 3% 1940-60	67½	4 8 11	5 4 6
Hastings 5% 1947-67	100	5 0 0	5 0 0
Hull 3½% 1925-55	82½	4 4 10	4 14 6
Liverpool 3½% Redeemable by agreement with holders or by purchase	72½	4 16 7	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	55	4 10 11	—
London City 3% Consolidated Stock after 1920 at option of Corporation	64½	4 13 0	—
Metropolitan Water Board 3% "A" 1963-2003	63½	4 14 6	—
Do. do 3% "B" 1934-2003	65	4 12 4	—
Middlesex C.C. 3½% 1927-47	85½	4 1 10	4 16 0
Newcastle 3½% Irredeemable	72	4 17 3	—
Nottingham 3% Irredeemable	63	4 15 3	—
Stockton 5% 1946-66	100	5 0 0	5 0 0
Wolverhampton 5% 1946-56	99	5 1 0	5 1 6
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	82½	4 17 0	—
Gt. Western Railway 5% Rent Charge	94½	5 5 10	—
Gt. Western Rly. 5% Preference	79½	6 5 9	—
L. & N.E. Rly. 4% Debenture	72½	5 10 4	—
L. & N.E. Rly. 4% 1st Guaranteed	66½	6 0 4	—
L. & N.E. Rly. 4% 1st Preference	52	7 13 10	—
L. Mid. & Scot. Rly. 4% Debenture	75	5 6 8	—
L. Mid. & Scot. Rly. 4% Guaranteed	68	5 17 8	—
L. Mid. & Scot. Rly. 4% Preference	52½	7 12 5	—
Southern Railway 4% Debenture	76	5 5 3	—
Southern Railway 5% Guaranteed	91½	5 9 3	—
Southern Railway 5% Preference	74½	6 14 3	—